TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORDKEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

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TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORDKEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

TUESDAY, MARCH 5, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The committee met, pursuant to call, at 10:30 a.m., in room 1100, Longworth House Office Building, Hon. Dan Rostenkowski (chairman of the committee) presiding.

[The press release announcing the hearing follows:]

[For immediate release, Thursday, Feb. 7, 1985]

THE HONORABLE DAN ROSTENKOWSKI (D., ILL.), CHAIRMAN, COMMITTEE ON WAYS AND MEANS, ANNOUNCES DETAILS OF A PUBLIC HEARING ON TREASURY'S TEMPORARY AND PROPOSED REGULATIONS RELATING TO RECORD KEEPING FOR AUTOMOBILES AND CERTAIN OTHER PROPERTY

The Honorable Dan Rostenkowski (D., Ill.), Chairman, Committee on Ways and Means, U.S. House of Representatives, today announced details of the public hearing on the Treasury Department's revised temporary and proposed regulations relating to the record keeping requirements for automobiles and certain other property. These regulations were originally published in the Federal Register of October 24, 1984, revisions to which are expected any day. The hearing will be held on Tuesday, March 5, 1985, in Room 1100 Longworth House Office Building, the Committee's main hearing room, starting at 9:30 a.m.

In announcing this hearing, Chairman Rostenkowski stated that "considerable controversy has arisen in response to the Treasury Department's proposed regulations implementing the new record keeping requirements for automobiles and other vehicles. The Committee is aware that some taxpayers with legitimate business expenses may be facing unduly burdensome record keeping requirements as a result of the new law, yet it remains concerned with the significant noncompliance under prior law resulting from overstatement of credits and deductions for the business use of automobiles and other property. The Committee intends that this hearing be a forum to fully air both of these concerns."

The Honorable Ron Pearlman, Assistant Secretary for Tax Policy, Department of the Treasury, is expected to be the initial witness.

BACKGROUND

Under prior law, a taxpayer was required to substantiate any claimed deduction for travel expenses, entertainment, recreation, or gifts by adequate records or other evidence. Taxpayers who could reasonably reconstruct these expenses could claim a deduction. These records were required to show the amount, time, place and business purpose of the expenses (Code section 274(d)).

Section 179 of P.L. 98-369, the Deficit Reduction Act of 1984 (the Act) amended prior law to require taxpayers to substantiate, with adequate contemporaneous records, any claimed credit or deduction: (1) with respect to business use of listed property, that is, automobiles, other transportation vehicles, any property generally

used for entertainment, recreation, or amusement, any computer equipment, and any other property specified in regulations; (2) with respect to traveling expenses (including meals and lodging while away from home); (3) for any entertainment, amusement or recreation expense, including use of a facility for such purpose; and (4) for any expense for gifts. These record keeping requirements are effective for taxable years beginning after 1984.

On October 24, 1984, the Treasury Department published temporary regulations implementing section 179 of the Act (49 FR 42701). On January 25, 1985, the Internal Revenue Service announced its intention to issue temporary and proposed regulations modifying the requirement to keep adequate contemporaneous records for automobiles and certain other vehicles (IR 85-6). These revised regulations are expected to be issued any day. The Committee is interested in learning what specific additional burdens associated with the new record keeping requirements remain in light of the revisions to the original temporary regulations. Further, the Committee expects that witnesses will offer suggestions for how the most burdensome requirements might be lessened without ignoring the present law distinction between business expenses, which are deductible, and personal expenses, which are not deductible.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD

Individuals and organizations interested in presenting oral testimony before the Committee must submit their requests to be heard in writing no later than close of business, Tuesday, February 26, 1985, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth Building, Washington, D.C. 20515. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline.

It is urged that persons and organizations having a common position make every effort to designate one spokesman to represent them in order for the Committee to hear as many points of view as possible. Time for oral presentations will be strictly limited with the understanding that a more detailed statement may be included in the printed record of the hearing. This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Committee are required to submit 200 copies of their prepared statements to the Committee office, room 1102 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to comply with this requirement may result in the witness being denied the opportunity to testify in person.

Requests to be heard must contain the following information:

1. The name, full address, and capacity in which the witness will appear, as well as a telephone number where the witness or a designated representative may be reached;

2. A list of clients or persons, or any organizations for whom the witness appears; and

3. A topical outline or summary of comments and recommendations.

The above information should also be incorporated in the prepared statements to be presented in person as well as those filed for the printed record of the hearing.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business, Friday, March 8, 1985, to Joseph K. Dowley, Chief Counsel, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 100 additional copies for this purpose to the Committee office before the hearing begins.

Chairman ROSTENKOWSKI. The committee will come to order. Good morning ladies and gentlemen. If at all possible, I would like our guests to find seats at this time.

Today, the committee is holding a hearing on the Treasury Department's proposed regulations dealing with recordkeeping requirements for automobiles and certain other property. This is an issue that has struck a raw nerve among many of the taxpaying

public. We on the committee are sensitive to these concerns and, thus, are responding with one of the earliest hearings of this session.

Last year, the House, as part of the Deficit Reduction Act of 1984, included limitations on the amount of depreciation and investment tax credit that could be taken for expensive luxury automobiles. These provisions were dramatically expanded in the Senate, including the contemporaneous recordkeeping requirement which is at issue here today. In the meantime, frustration has redoubled as Treasury regulations were issued and reissued—without setting forth understandable and practical recordkeeping rules.

While we want to make the substantiation requirements as simple as possible, we must be guided by our initial purpose: to assure that deductions claimed are, in fact, legitimate business expenses. Going into the 1984 act, compliance in this area was not particularly high. Many taxpayers were either keeping no records or thought that commuting costs were deductible.

As we begin the long task of tax simplification and reform, we are particularly sensitive to provisions that accomplish neither. I think we should remember our original concern that the law in this area was not being evenly and fairly enforced as we seek to modify its present impact. Repeal obviously satisfies the demand for simplicity. It also raises serious doubts about Congress' resolve in pursuit of reform.

I trust some of our witnesses today will offer constructive suggestions for reaching a formula that balances both simplicity and compliance.

At this time, I want to call on our ranking minority member, Mr. Duncan.

Mr. DUNCAN. I thank you for calling hearings on this very important subject because most of us have received a number of comments from constituents relative to the impact which these new recordkeeping rules will have on the existing business practices.

I think that the hearings will provide a good opportunity for us to explore whether the burdens being imposed by the 1984 legislation as interpreted by the Treasury regulations outweigh the compliance improvements that they were designed to reduce. I look forward to hearing from the many Members of Congress who have expressed an interest in this legislation, and also I will be interested in the testimony from the Treasury representatives.

[Mr. Daub submitted the following opening statement:]

OPENING STATEMENT OF HON. HAL DAUB, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, I share the concern of my colleagues on both sides of the aisle, with respect to the burdensome automobile recordkeeping requirements. Soon after Congress enacted the "adequate contemporaneous record" requirement, my constituents began to make known the difficulties which they faced in complying with the new law. During recent months, there has been nothing less than a public outcry from these people as small businessmen and farmers tackled the recordkeeping burden.

I would compliment the chairman for holding this hearing to examine the scope of the problem. It is incumbent upon this committee to be mindful of the conflicting policy objectives which surround this issue. On one hand, we must insure the integrity of the tax system by requiring audit trial documentation to support taxpayer deductions and credits. On the other hand, we cannot jeopardize that same integrity

of the tax system by creating extensive administrative burdens which are perceived as onerous and mean spirited. I would agree with the chairman, that a proper balance must be reached. Based upon what we have heard to date, the contemporaneous recordkeeping rules for automobiles have clearly exceeded that balance. While paved with good intent from a philosophical standpoint, contemporaneous recordkeeping in its purest sense is a dead end street. The question before us today is simply whether the Treasury's proposed regulations have sufficiently modified the recordkeeping requirements. If not, Congress seems to be compelled to take some action in an expeditious manner to remedy this situation.

Chairman ROSTENKOWSKI. As pointed out by Mr. Duncan, many Members of Congress are scheduled to testify today. I suggest to those Members who will testify that they kindly restrict their oral testimony to 5 minutes. However, if, Members would like to insert a longer statement in the record, that is certainly permissible.

Mr. Anthony, welcome to the committee. I am sure you will share great knowledge with us as to the input that you have received from constituents in your congressional district regarding the provisions passed last year and the Treasury Department's regulations.

STATEMENT OF HON. BERYL ANTHONY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. ANTHONY. I would like to have my full testimony submitted for the record.

If anyone has not seen the 57-page document issued on Monday, January 7, I certainly encourage them to do so. After you look at these proposed regulations it will be clear why there is such a public outcry over this particular requirement.

Prior to the change of the 1984 law, section 274 required that taxpayers keep adequate records or have corroborative evidence of the expense involved. Now, however, under section 179(b) of the Deficit Reduction Act, the user of an automobile must have a separate entry in a log, specifying when the vehicle is used. In addition, the user must specify: First, the date of use of the property; second, the name of the user of the property; third, the number of the miles; and, fourth, the purpose of the use of the property.

The section also requires preparers of tax returns to notify the taxpayers of the new requirements and obtain written confirmation from each taxpayer certifying that adequate records were maintained. If the taxpayer fails to follow these requirements, he would be subject to a $25 fine.

Mr. Chairman, I must confess that I was caught off guard when the letters and telephone calls came pouring in. However, after reviewing the original regulations, it was easy to see why there was such public outrage. It is just that kind of requirement that creates public contempt for the IRS and Government in general.

On January 21, along with a number of the members of the Ways and Means Committee, I introduced legislation to repeal section 179(b). This bill, H.R. 531, now has over 126 cosponsors, including 18 members of this committee. Since the introduction of this measure, the IRS has issued a set of regulations. The new proposal, while vastly superior to the first, simply carves out narrow exemptions to the requirements and, if anything, is more confusing and arbitrary than the original proposal.

For example, if a man lives on a farm and also works in a factory, he has a pickup in which he hauls hay to feed three or four cows, what kind of travel is he supposed to log in for the IRS when he goes to the general store to buy both hay and groceries? This would be typical in a rural district like I represent.

What kind of travel is supposed to be logged into the IRS in the case of the surgeon who is supposed to take time to log in his mileage to a hospital emergency room before he cares for a critically injured person?

Or if an attorney is asked a legal question during a private lunch in a restaurant, can he claim his drive to and from the restaurant was for business purposes?

Farmers in my district will either have to accept the 80–20 percent formula or keep a log book. Undoubtedly, my farmers will take the 80 percent, even if they use these vehicles 90 percent of the time for their business. The overall hassle and increased paperwork adhering to these provisions will aggravate these people to the point where they will not take advantage of the credit or deduction to which they are entitled.

There was virtually no debate in either the House or Senate about contemporaneous recordkeeping. The debate focused on the luxury car provisions, and I just can't believe it was the intention of most Members to force these new requirements on farmers and small businessmen. Mr. Chairman, you asked for suggestions for how the most burdensome requirements might be lessened. My suggestion is to repeal these contemporaneous recordkeeping provisions and go back to the original section 274 requirement of adequate records and corroborating evidence. I believe the IRS can strengthen our compliance capabilities if stricter guidelines to section 274 are adhered to, but with the footnote here not to go back to 274 and then say we are going to use contemporaneous records as a way of compliance.

Another problem, Mr. Chairman, relates to public safety employee vehicles are not included in this exclusion. This would result in State troopers, sheriff's deputies, firemen, and emergency medical personnel being taxed on a portion of the use of their vehicle. I do not consider these people to ever be off duty. In most cases, they are on call 24 hours a day, and, when they do travel, they are protecting the safety of our citizens. In order to address this problem, I introduced H.R. 773. This bill provides a fringe benefit exclusion for any use of a public safety vehicle.

I would like to close with a few paragraphs from the transmittal letter of the "Final Report" of the Paperwork Commission. Mr. Chairman and members of the committee, I think this adequately summarizes the complete outrage that I have heard from my constituents and what drives me to want to come to testify today.

The theme we heard repeatedly throughtout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However these people can be frustrated by a government which, in their view, does not trust them. Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the Government and the people. Countless reporting and recordkeeping requirements and other heavyhanded investigation in monitoring schemes have been instituted, based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored, and re-

checked. This situation in this assumption must be must be reversed if we are to restore efficiency within Government and confidence in Government by the people, and if we are to realize the potential for cooperative attainment of our goals as a Nation.

Mr. Chairman, I believe we can take the first step in restoring this confidence by repealing these pernicious and onerous record-keeping requirements.

[The prepared statement follows:]

STATEMENT OF HON. BERYL ANTHONY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. Chairman, I appreciate the opportunity to appear before the Ways and Means Committee today to speak on the newly revised automobile record-keeping requirements. Most small businessemen and farmers will consider this the second Ways and Means Committee hearing on tax simplification. The type of regulations recently proposed by the Internal Revenue Service is one of the main reasons the Ways and Means Committee is going to spend this year discussing tax simplification and tax reform. If anyone has not seen the 57-page document issued by the I.R.S., I wish you would take the time to look it over. It will become clear why there is such a public outcry over this requirement.

As the Committee is aware, the Tax Reform Act of 1984 made several changes in depreciating and expensing the costs associated with the business use of an automobile and other personal use property. These changes were based mainly on newspaper advertisements promoting how much a person could save on his or her taxes by purchasing a luxury car. During the drafting of legislation to deal with this problem, new substantiation requirements under Section 274 of the Internal Revenue Code were developed. Prior to this change, Section 274 required that taxpayers keep adequate records or have corroborating evidence of the expense involved. Now, however, under Section 179(b) of the Deficit Reduction Act, the user of an automobile must have a separate entry in a log, specifying each time the vehicle is used. In addition, the user must specify: (1) the date of use of the property, (2) the name of the user of the property, (3) the number of miles, and (4) the purpose of the use of the property. The section also requires preparers of tax returns to notify the taxpayer of the new requirements and obtain written confirmation from each taxpayer certifying that adequate records were maintained. If the taxpayer fails to follow these requirements, he would be subject to a $25 fine.

I must confess that I was caught off guard when the letters and telephone calls came pouring in. However, after reviewing the original regulations, it was easy to see why there was such public outrage. These regulations are obviously overly burdensome, unnecessary and counterproductive—and is just the kind of requirement that creates public contempt for the I.R.S. and government in general.

On January 21, along with a number of members of the Ways and Means Committee, I introduced legislation to repeal Section 179(b). This bill, H.R. 531, now has over 126 cosponsors, including 17 members of this committee. Since the introduction of this measure, the I.R.S. has issued a new set of regulations. The new proposal, while vastly superior to the first, simply carves out narrow exemptions to the requirements and, if anything, is more confusing and arbitrary than the original proposal.

For example, if a man lives on a farm and also works in a factory, and he has a pick-up in which he hauls hay to feed three or four cows, what kind of travel is he supposed to log in for the I.R.S. when he goes to the general store to buy both hay and groceries. Is a surgeon supposed to take time to log in his mileage to a hospital emergency room before he cares for a critically injured person? If an attorney is asked a legal question by a potential client during a private lunch in a restaurant, can he claim that his drive to and from the restaurant was for business purposes?

Farmers in my district will either have to accept the 80–20 formula or have to keep a log book, Undoubtedly, my farmers will take the 80%, even if they use these vehicles 90% of the time for their business. The overall hassle and increased paperwork of adhering to these provisions will aggravate these people to the point where they will not take advantage of the credit or deduction to which they are entitled.

There was virtually no debate in either the House or the Senate about contemporaneous record-keeping. The debate focused on the luxury car provisions, and I just can't believe it was the intention of most Members to force these new requirements on farmers and small businessmen. Mr. Chairman, you asked for suggestions for how the most burdensome requirements might be lessened. My suggestion is to

repeal these contemporaneous record-keeping provisions and go back to the original Section 274 requirement of adequate records and corroborating evidence. I believe the I.R.S. can strengthen our compliance capabilities if stricter guidelines to Section 274 are adhered to.

Another problem, Mr. Chairman, which is related to this issue, is in the area of fringe benefits. Under new Section 132, many existing fringe benefits were codified. Several exclusions were put into the statute, including a "working condition" exclusion. Unfortunately, as interpreted by the I.R.S., public safety employee vehicles are not included in this exclusion. This will result in state troopers, sheriff's deputies, firemen, and emergency medical personnel being taxed on a portion of the use of their vehicle. I do not consider these people to ever be off duty. In most cases, they are on call 24-hours-a-day, and when they do travel, they are protecting the safety of our citizens. In order to address this problem, I introduced H.R. 773. This bill provides a fringe benefit exclusion for any use of a public safety vehicle. It seems ridiculous to have a law enforcement officer keep a log book the minute his particular shift ends.

I know there are many witnesses here today, Mr. Chairman, and I don't want to take up anymore time than necessary. I would just like to close with a few paragraphs from the transmittal letter of the Final Report of the Paperwork Commission:

"The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However, these people can be frustrated by a government which, in their view, does not trust them. . . Many people feel, and the Commission agrees, that a multibillion dollar wall of paperwork has been erected between the government and the people. Countless reporting and record-keeping requirements and other heavyhanded investigation and monitoring schemes have been instituted, based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored, and rechecked. . . . This situation and this assumption must be reversed if we are to restore efficiency within Government and confidence in Government by the people, and if we are to realize the potential for cooperative attainment of our goals as a Nation."

I believe we can take the first step in restoring this confidence today by repealing these pernicious and onerous record-keeping requirements.

Chairman ROSTENKOWSKI. Thank you, Mr. Anthony.

Are there any questions?

Congressman Wes Watkins.

Welcome to the committee, Wes. The committee is ready to receive your testimony, if you would like to begin.

STATEMENT OF HON. WES WATKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. WATKINS. Thank you, Mr. Chairman.

I would like to pay recognition and give due credit to this committee for not having created a merger with this particular language. I think most of us recognize it came from the other body during the wee hours of the morning, so I give you credit for not bringing this language forth in the wee hours of the morning when most eyes were, in the limbo sense, on expensive vehicles. The words "contemporaneous recordkeeping requirement" emerged from that meeting, and now we are having to work with it and live with it presently.

But I come before you, Mr. Chairman, and members of the committee, to ask you to repeal this particular phrase in the language because I know from what I have received from my district, numerous cards and letters, that this is going to touch every single business in the area. The question is, as my friend from Arkansas stated, how do you in many of these areas break down what is business and what is actually personal, in the case of a worker in an oil

patch, in many cases picking up other things, and also many of the field hands working on the ranches in the cattle business as well as farms?

It is an overburden requirement, and I think most of us would like to see us go back to this other area. It has been estimated it will cost the American people $7 to $8 billion to fulfill the requirement and maybe be able to gain slightly over $100 million for the Treasury. I think we can see that this is going in the wrong direction.

It is not like the withholding after interest provision where the banks help generate a great deal of those cards and letters in a very or orchestrated way. The cards and letters I have received have come from all facets of business and all facets of agriculture, small business as well as large. So it has not been an orchestrated one, but one that has been a ground swell from the grassroots.

Mr. Chairman, I appreciate your holding these hearings. I know that all of you will be working for the right decision, and I hope that first step is the repeal letter. Thank you, Mr. Chairman, for allowing me to come by. I know you have a lot of other witnesses so I don't want to take up too much time.

Chairman ROSTENKOWSKI. Thank you, Wes. Are there any questions? If not; we thank you.

The Chair calls Congressman Luken.

Welcome to the committee, Tom. The committee is ready to receive your testimony. You may proceed.

STATEMENT OF HON. THOMAS A. LUKEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND CHAIRMAN, SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, COMMITTEE ON SMALL BUSINESS

Mr. LUKEN. Mr. Chairman, members of the committee, you may be aware that the CBS Morning News took note of this subject with extensive coverage this morning. This is an indication of the tremendous concern that there is on this issue. As CBS pointed out, there is a grassroots reaction to this particular legislation and it is legislation.

As a result of that, and its application to small business, our Small Business Committee on Taxation held hearings a couple of weeks ago, and we heard from the chamber of commerce. We heard from fire and police officials—those involved in emergency work about the variety of problems that arise from this legislation. I think that the changes in regulations have not solved the problem. As a matter of fact, it may compound it in some areas.

I think that this committee ought to report legislation to the Congress which repeals the adequate and contemporaneous record-keeping requirement. I think this was well-motivated legislation but it is counterproductive. It gives the evader—and that is the problem, we all admit—the person who wants to evade, it gives that person a road map as to how to evade. On the other hand, those who are less sophisticated, who are not seeking ways to evade will be penalized at the end of the year. The hew and cry that has been raised up to now will be nothing compared to that which will

occur in 1986 when our taxpayers are forced to fill out their returns and find out that they must invent records. Incidentally, this will be applying to many Members of Congress, and we have talked to Members of Congress, and many Members are not aware that on cars they lease, for example, Government leases for automobiles that they use, that these provisions apply to them. So I think we are all in the same boat. I don't mean that Members of Congress are going to be evaders but they are going to be penalized at the end of the year for something they don't realize will hit them. They will have to pay even though these deductions would be legitimate.

So the outcry from our constituents has been long and loud, and I think in concluding this brief presentation, because I don't wish to impose upon the time of the members of the committee, I would emphasize that there was nothing wrong with the previous standard. There was absolutely nothing wrong with the previous standard.

So, if this committee recommends repeal and repeal of this offensive provision occurs, we will go back to the reasonable reporting requirements which were enforceable by the IRS. This requirement will not be enforceable and those who want to evade realize it is not enforceable, and that is why it gives them a road map, It gives them actual directions as to how to evade. We don't want to force the American taxpayer either to be an evader, in effect, a criminal, or by being unsophisticated to pay unnecessary, unjustified taxes.

I thank the members of the committee.

[The prepared statement and attachment follow:]

STATEMENT OF HON. THOMAS A. LUKEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

I am pleased to have the opportunity today to discuss the issue of "contemporaneous record-keeping" and to share with you information which the Small Business Committee has obtained over the past couple of months. These hearings constitute the first comprehensive examination of the issue of the contemporaneous record-keeping provision which was added to last year's deficit reduction act by the Senate.

It is doubtful that anyone predicted that this provision, of the numerous changes made by the Deficit Reduction Act, would generate the kind of spontaneous, angry reaction from the public that we have experienced. The response from our constituents has been truly a grass-roots reaction, and largely a self-generated one. Most of the correspondence I've received is individually written, and shows very specific paperwork and cost burdens imposed on people by this record-keeping. If your experience has been similar to mine when I scheduled a hearing on this subject, you have received more requests from associations and individuals to testify than you can accommodate. One of the reasons for that is the tremendous pressure being exerted on associations by their membership to demonstrate that they are doing everything possible to eliminate the new regulations.

I'm persuaded that his taxpayer revolt against paperwork will only get stronger if we fail to act expeditiously to return the law to the way it was prior to June, 1984. We have only heard from those taxpayers who are aware that the provision affects them. Just wait until those who don't know about the law start filling out their 1985 tax returns and discover they'll lost legitimate business deductions because their records are not "contemporaneous". Clearly there is a great portion of the public still unaware of the law. One of the largest small business groups testified before the Small Business Committee that only 25 percent of its membership used accountants. We can be certain that there are many of those people who don't even know what's in store for them—and those are the joiners, who are likely to be the best-informed.

The only way out of this predicament is to return to the law as it existed prior to June, 1985. The law then would deny deductions unless the taxpayer could substantiate them by "adequate records or by sufficient evidence corrobating his own state-

ment" . . . That is not a lax standard, but merely allows a taxpayer to prove his or her case if adequate records are not kept. It does not set up a standard so rigid that all evidence except the logs would be discounted. It could allow the use of an appointment calendar, or sales reports to support a claim for a deduction. The old standard is, in effect, a "rule of reason" and would not automatically throw out evidence that is not truly contemporaneous. As a tax accountant told our Small Business Committee "If there was abuse under prior law, it was not the result of deficiency in statutory language".

Testimony at our small business hearings revealed that there could be enormous costs imposed on small business by these regulations, with most of that cost being passed on to the consumer. One conservative estimate put the national cost at $7 billion, for a very minor revenue gain of just over $100 million. One small electronics firm estimated its loss at $81,000 per year. I must say that many of us on the Small Business Committee are now being asked just what good that Paperwork Reduction Act has done.

In an effort to respond to the outpouring of criticism of its regulations implementing the record-keeping provisions of the Deficit Reduction Act, the Internal Revenue Service has recently issued yet another set of proposed regulations. I will agree that this latest set of regulations ameliorates some of the problems which resulted from the initial regulations issued back in October, 1984. Permitting a taxpayer to make an entry at the beginning and end of a period of uninterupted business use rather than at each stop is helpful, and will eliminate paperwork for some taxpayers. But I have several criticisms of the new regulations both for broad policy reasons and in some specifics. We must realize that the American taxpayer is supposed to have been meeting the requirements of this law since Janaury 1, 1985. Those Americans who have been attempting to comply with the stops and starts on these regulations must have run up some hefty bills with their accountants—if not their psychiatrists. Let's look at the recent regulatory history:

1. October 24, 1984—IRS issues temporary regulations on substantiation
2. January 7, 1985—IRS issues temporary regulations regarding taxation of fringe benefits
3. January 25, 1985—IRS issues press release announcing changes in regulations and promises to publish them "next week"
4. February 2, 1985—IRS publishes temporary regulations and notice of proposed rulemaking for both substantiation through adequate contemporaneous recordkeeping and for fringe benefits.

It is obvious that the agency has had some difficulty in devising regulations that will accomplish enforcement goals without causing unreasonable burdens on honest taxpayers. Is it any wonder that one of the witnesses before my subcommittee, who happened to be an accountant, said the regulations were "difficult to comply with" and that it was hard to know what was going on? It is only reasonable for Congress to take a good, hard look at this section of the law and go back to the drawing board by rescinding our error of last year. Let's not continue to leave millions of our citizens in a state of tax-reporting limbo and use them as guinea pigs while the bureaucrats try to remedy something that can only be done through legislation.

The results of the latest IRS efforts to fix the infirmities in the regulations show why we must return the law to where it was previously. It appears that the service attempting to repair the damage that was being done to each group complaining about how the regulations affected its members. Rather than applying a fair and reasonable rule across the board, the service has taken the approach of saying, "Well, group A can assume 70 percent use if its members meet certain requirements, and group B can assume 80 percent business use under different circumstances." That approach just won't wash with the American people. It is inherently unfair and inequitable, and will by its very nature require some people to fill out logs while others don't have to. Although it may seem hard to believe because of the large numbers of associations who are talking to us about this issue, there are some interests who don't have Washington representation, and they are the ones likely to be left out of consideration by the Service.

A close look at some of the revisions of the regulations that at first glance appear to offer some needed relief will reveal that an equitable solution has yet to be found short of legislative repeal. The revision which appears to affect the most people would allow a person who spends most of the day out of the office making several stops to take a deduction or credit "as if" the business use were 80 percent in a commercial vehicle or 70 percent if in another vehicle. The problem with this provision is that the percentages do not reflect actual business usage. I am aware of no surveys done by IRS to ascertain if these percentages are correct. Besides that objection, I return to the point I was making earlier about the inherent unfairness in

making this kind of distinction between taxpayers. Doesn't this "safe harbor" really let off the hook anyone who is out of the office most of the day but who uses the automobile less than 70 percent for business? On the one hand, it gives away something that the current standards would not, and on the other hand, it doesn't offer relief from this burden for those who most need it.

Another infirmity with this proposal is the exception that denies the use of a safe harbor to those who spend the bulk of their time in the office. This would require extensive record-keeping for those who do spend the bulk of their time in the office, but nevertheless do a lot of driving for business. This would include people in the professions, as well as many small business owners who may spend much time in the office but need to make a larger number of calls on banks, job sites, and suppliers as well as customers.

The farm community will not be mollified by similar provisions which affect its members. I'm from the city, but I would doubt that there would be many vehicles on farms that are used only 70 percent for business. So, again, what appears to be an offer of some relief from these onerous regulations turns out to be little help. Further making the exception less available to the farmer is an additional requirement that the exception applies only to those whose gross income comes from farming. During a period in time when farmers must take other jobs just to stay afloat, that qualification will result in many farmers being denied the use of a safe harbor.

I am hopeful that the response from the IRS or the Congress will not be to simply increase the percentage of the safe harbors, or add a new category of taxpayer who can qualify for a safe harbor. That is simply not good tax policy.

Another series of problems were raised by our hearings relating to fringe benefits and the attendant need to substantiate personal use for imputing income purposes. The problems caused by such a provision of law were best highlighted by the testimony we received from representatives of the International Association of Police Chiefs and International Association of Fire Chiefs. They stated that there would be a danger to health and safety if income were to be inputed for commuting by officers and firemen who are required to do so by their employers for obvious public safety purposes. The valuation of commuting, even if lowered to $3.00 per day is a disincentive for people to take these vehicles home. If policies do change, and policeman no longer take the automobiles home, there will be a loss in public safety where such cars are a deterrent to crime. Volunteer firefighters, who are paid mostly as part-time employees, will have a real disincentive if they have to record their "business use" each time they go out to fight a fire at 3 am, even if the definition of contemporaneous would allow them to write down their mileage upon return.

Similar problems relating to the imputed income from commuting would affect other people as well. Many plumbers, electricians, and utility repair people take vehicles home for emergency purposes. This is certainly done for the benefit of the employer, not the employee. Should the workers be penalized? Is that really what Congress intended?

The result of the changes in the law with regard to record-keeping made by the deficit reduction act are quite large. Businesses are already making decisions based on the tax consequences of how their vehicles are used. Some companies are already giving up the use of company automobiles and requiring employees to use theirs. Some will have to consider storing vehicles at the plant or other business location if they have the room. The consequences of this provision are great, and not fully known as yet. At a time in which all of us are urging a simplification of the Tax Code which would lead to decisions being made on the basis of sound business judgement, this regulatory approach is a mistake. As our witness from the chamber of commerce said, we won't even know the total impact of these regulations for 2-3 years when people start having audits. From all the evidence I've seen to date, there is little to be gained, and much to be lost from continued use of the "adequate contemporaneous recordkeeping" standard.

I am submitting for the record a statement from a large number of our colleagues urging the committee to act to repeal this provision. I hope you can move expeditiously to deal with this mistake.

Thank you for your attention.

STATEMENT—MARCH 5, 1985

We urge the Committee on Ways and Means to report legislation to repeal the "adequate contemporaneous" record-keeping requirement that was added to section 274(d) of the Internal Revenue Code during the Conference on the Deficit Reduction Act of 1984.

The outcry from our constituents (who are aware of the requirement) has been as loud and prolonged as on any tax issue, louder even than the protest over withholding on dividends and interest. The complaints are coming from a wide range of auto-users, from the part-time individual sales person trying to make ends meet, to the fleet owners, the largest companies. The protests about the burdens of this record-keeping are not limited to the small numbers of people who may have been abusing the tax code, but are from a true cross-section of the American public.

At the Small Business Committee hearing on February 8, 1985 there were more than 20 witnesses who told the panel of the loss of productivity suffered as a result of the onerous record-keeping requirement. It is conservatively estimated that the cost to the consumer is at least $7 billion! That is an incredible price to pay for the relatively miniscule gain in revenue estimated at slightly more than $100 million for the Treasury. Representatives of the International Association of Fire Chiefs and the International Association of Police Chiefs testified that the vital life-saving services performed by part-time volunteers will be discouraged by these burdens.

The revised regulations issued by the Internal Revenue Service do not eliminate the deficiencies inherent in the "contemporaneous standards." The Service has attempted to choose among different groups in the taxpaying public and set standards for substantiation accordingly. This is a hit and miss approach that is guaranteed to result in inequities. A reasonable standard, such as existed prior to passage of the Deficit Reduction Act, should be made to apply across the board, treating taxpayers equally. Such a standard should allow for the use of reason, and not straight-jacket the taxpayer into a particular method of substantiating his or her deduction, such as through a requirement that logs be kept. A taxpayer should not be denied a legitimate deduction for a business expense merely for failing to fill out a log if the expenditure can be proven to be for business by other means.

A majority of the Members of Congress have now cosponsored repeal legislation. We urge the Committee to act expeditiously on the issue to end the confusion that exists among people trying to comply with regulations which have been altered since their inception just January 1st, and which face further alteration either through legislation or following the current public comment period. Thank you for your assistance.

Buddy Roemer, Frank Horton, Austin J. Murphy, Esteban Edward Torres, William M. Hendon, Nancy L. Johnson, Frank R. Wolf, Joe Kolter, Thomas A. Luken, Charles Rose, Henry J. Nowak, Richard C. Shelby, Harris W. Fawell, Don Sundquist, Ken Kramer, and Toby Roth.

Rod Chandler, Joe Barton, Vin Weber, Barbara Boxer, Bill Emerson, Nicholas Mavroules, Tony Coelho, Thomas J. Ridge, Sherwood L. Boehlert, Bill McCollum, Arlan Stangeland, Dennis M. Hertel, E. Clay Shaw, Jr., John Bryant, Richard Ray, Robert Lindsay Thomas, Michael D. Barnes, Richard K. Armey, Sonny Callahan, Jim Lightfoot, Hank Brown, and Howard Coble.

Michael L. Strang, James V. Hansen, Robert W. Davis, Ron Wyden, Bill Clinger, Solomon Otiz, Larry Combest, Ralph M. Hall, Richard H. Stallings, Larry Smith, William Carney, Beau Boulter, Sid Morrison, Edward Feighan, Mike DeWine, Howard Wolpe, Dean A. Gallo, Steve Bartlett, Charles Pashayan, Jr., and Webb Franklin.

David Dreier, Ben Erdreich, Ron Packard, Thomas F. Hartnett, Tom Bliley, Sonny Montgomery, Charles Wilson, Wes Watkins, Philip R. Sharp, Bob Traxler, Barbara F. Vucanovich, Dave McCurdy, Bill Hughes, Billy Tauzin, Walter B. Jones, John Breaux, George Miller, Don Ritter, Doug Applegate, and George (Buddy) Darden.

Tom Lewis, Jim Olin, Beverly B. Byron, George W. Gekas, Doug Bereuter, Dan Young, Ron de Lugo, Claude Pepper, Virginia Smith, Timothy J. Penny, Tom Loeffler, John McCain, William O. Lipinski, G. William Whitehurst, Thomas N. Kindness, Norman F. Lent, Parren J. Mitchell, Don Fuqua, Carroll Hubbard, and John E. Grotberg.

Ed Jones, Nick J. Rahall, II, Marvin Leath, Earl Hutto, Benjamin A. Gilman, David Obey, Charles W. Stenholm, Marjorie S. Holt, Harold L. Volkmer, Gene Taylor, Connie Mack, Robert C. Smith, Ron Marlenee, Les AuCoin, W.G. (Bill) Hefner, James J. Howard, Fred J. Eckert, Bob Carr, Pat Williams, and Dan Daniel.

Joseph M. McDade, Hamilton Fish, Jr., Robert S. Walker, Robert E. Badham, Bob Livingston, Ben Blaz, John D. Dingell, Sam Gejdenson, Howard C. Nielson, John Edward Porter, Andy Ireland, F. James Sensenbrenner, Jr., Glenn English, E. Thomas Coleman, George M.

O'Brien, William E. Dannemeyer, Thomas D. DeLay, John R. McKernan, Jr., Carl C. Perkins, and Joe Skeen.

Wayne Dowdy, Richard J. Durbin, Thomas A. Daschle, Bobbi Fiedler, John Paul Hammerschmidt, Charles Hatcher, Carlos J. Moorhead, James A. Traficant, Jr., Gus Savage, Paul E. Kanjorski, Jim Saxton, Robert K. Dornan, Joseph J. DioGuardi, Berkley Bedell, Bob Whittaker, Jack Fields, Dan Mica, Denny Smith, Bill Richardson, Tom Lantos, J. Roy Rowland, Robin Tallon, Terry L. Bruce, and Stephen L. Neal.

Chairman ROSTENKOWSKI. Thank you, Tom.

Are there any questions of Congressman Luken? If not, thank you very much.

The Chair calls Congressman Bliley.

Mr. BLILEY. Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Welcome to the committee. The committee is ready to receive your testimony.

Mr. BLILEY. I appreciate your allowing me this opportunity to come before you today to testify on the contemporaneous recordkeeping requirements of last year's tax bill. I intend to keep my statement brief. In order to do so, I would ask permission to submit for the committee's record a copy of my statement.

Chairman ROSTENKOWSKI. Without objection, your entire statement will be included in the record.

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Mr. Chairman, I would like to make five simple points about the contemporaneous recordkeeping requirements.

First, I have been unable to isolate the exact amount of revenue the committee hopes to gain from these new requirements. The revenue estimates of the Joint Committee on Taxation lump several tax provisions together for $150 million and $233 million in revenue gains for fiscal years 1985 and 1986, respectively. But it is unclear what portion of these revenues will come from these rules. The committee might do well to inspect how much revenue is being lost because people are spending time filling out reams of paper when they could be using that time to earn more money and generate more money for the Treasury.

Second, I believe it is the task of Congress to revise or repeal a law which Congress has passed. While I am heartened the IRS tried to make their new regulations in this area more livable, the IRS may have overstepped its bounds in seeking to accommodate the concerns of the public in order to keep its rules substantially intact. Whatever the will of Congress, it should be fully articulated for the IRS to implement.

Third, I think the revisions that the IRS made recently are beyond the ken of the average taxpayer. Joe and Martha Six-pack should not have to hold degrees in accounting just to be able to file their tax forms properly. Beyond this, the IRS's revisions leave unanswered several important questions. The IRS does not adequately define what constitutes "sales and services"; nor does the IRS effort to accommodate farmers include automobiles used in the business of farming.

But, most importantly, the IRS's efforts to accommodate the public and so keep these rules on the books will have the effect of

encouraging the very activity it was meant to stop. The legitimate heavy use of an automobile will have to be accounted for, while the taxpayer who wants to pad his account will be eligible for an almost automatic writeoff.

This brings me to my last point, Mr. Chairman, which is that I think the provisions of last year's tax bill requiring contemporaneous records should be repealed. A huge number of our colleagues share this sentiment. As an original cosponsor of H.R. 600 with my colleague Buddy Roemer and over 100 other Members, I would like to say that I think we can do better.

The problem that this law tried to attack is still with us, and I admit repealing that law will not help. But it will give us a clean slate to work from, and it will tell the IRS to try to give up on trying every possible permutation to save this law.

Again, thank you for giving me this opportunity. I appreciate your giving me the chance to come to tell you what my constituents are saying about contemporaneous recordkeeping.

[The prepared statement and attachment follow:]

STATEMENT OF HON. THOMAS J. BLILEY, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, Members of the Committee, I appreciate your allowing me the opportunity to come before you today to testify on the contemporaneous record-keeping requirements of last year's Deficit Reduction Tax Act. I intend to keep my statement brief, and to do so, I would ask permission to submit for the Committee's record a copy of my statement of February 8 on this same topic before the House Small Business Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business.

Mr. Chairman, I would like to make five simple points about the contemporaneous record-keeping requirements. First, I have been unable to isolate the exact amount of revenue which the Committee hopes to gain from these new requirements. The revenue estimates of the Joint Committee on Taxation lump several tax provisions together for $150 million and $233 million revenue gains in Fiscal 1985 and 1986 respectively, but it is unclear what portion of these revenues will come from these rules. The Committee might do well to inspect how much revenue is being lost because people are spending time filing out reams of paper when they could be using that time to earn more money and generate new revenues for the Treasury.

Second, I believe it is the task of Congress to revise or repeal a law which Congress has passed. While I'm heartened that the IRS tried to make their new regulations in this area more liveable, the IRS may have overstepped its bounds in seeking to accommodate the concerns of the public in order to keep its rules substantially intact. Whatever the will of the Congress, it should be fully articulated for the IRS to implement.

Third, I think the revisions that the IRS made recently are beyond the ken of the average taxpayer. Joe and Martha Six-pack should not have to hold degrees in accounting just to be able to file their taxes properly. Beyond this, the IRS's revisions leave unanswered several important questions. The IRS does not adequately define what constitutes "sales and services"; nor does the IRS effort to accommodate farmers include automobiles used in the business of farming.

But most importantly, the IRS's efforts to accommodate the public and so keep these rules on the books will have the effect of encouraging the very activity it was meant to stop. The legitimate heavy use of an auto will still have to be accounted for, while the taxpayer who wants to pad his account will be eligible for an almost automatic write-off.

This all brings me to my last point, Mr. Chairman, which is that I think the provisions of last year's tax bill which require contemporaneous record-keeping should be repealed. A huge number of our colleagues share this sentiment. As an original cosponsor of H.R. 600 with my colleague Buddy Roemer and over 100 other Members, I would like to say that I think we can do better.

The problem that this law tried to attack is still with us. And I admit that repealing that law will not help. But it will give us a clean slate to work from, and it will tell the IRS to give up on trying possible permutation to save this law.

Again, Mr. Chairman, thank you for giving me this opportunity. I appreciate your giving me the chance to come tell you what my constituents are saying about contemporaneous record-keeping.

STATEMENT OF HON. THOMAS J. BLILEY, JR., BEFORE THE SUBCOMMITTEE ON ANTITRUST AND RESTRAINT OF TRADE ACTIVITIES AFFECTING SMALL BUSINESS, U.S. HOUSE OF REPRESENTATIVES, REGARDING REPEAL OF CONTEMPORANEOUS RECORD-KEEPING SUBSTANTIATION REQUIREMENTS FOR TAX PURPOSES

Mr. Chairman, Members of the Committee, thank you for giving me the opportunity to come before you today. The subject of this hearing—the effect of the recently-enacted contemporaneous record-keeping requirements of the 1984 Deficit Reduction Tax Act on small business men and women—is a matter of great concern to the millions of Americans who routinely use their automobiles in the course of conducting business. I'm confident that as knowledge of these new requirements grows throughout the country, so will the groundswell of opposition to these burdensome new regulations.

I think it is particularly commendable, Mr. Chairman, that you have seen this opposition movement as it is materializaing at its earliest stages. Members of Congress who are concerned about the new law sincerely appreciate your creating a forum for our grievances to be aired.

I would also like to note the fine work of the gentleman from Louisiana, Representative Roemer, a Member of the Committee, with whom I've worked to publicize the problems with these new rules and whom I've joined in sponsoring H.R. 600, the "Taxpayer Relief Act of 1985." Mr. Roemer and other Members who have introduced legislation on this subject deserve special recognition for their efforts.

Mr. Chairman, prior to passage of the 1984 Deficit Reduction Tax Act, taxpayers who wanted to claim standards business deductions for the use of automobiles in their vocations were required to keep "adequate" records with sufficient evidence to justify these business use deductions. These rules applied not only to cars but also to other property used in business and for personal or family use. Under the prior law, business men and women could keep weekly logs or even reconstruct their logs later as long as they could still prove proper business use.

While these rules were far from perfect, the new rules go beyond the bounds of reason in correcting the problem.

Contemporaneous record-keeping—requiring taxpayers to keep a log at the actual time of each use—have been particularly burdensome to some members of our economy like farmers, who routinely use their trucks interchangeably for business and personal use, and just plain onerous on every one else. I think that at a time when farmes have to worry about the cost of keeping their lands and about how they are going to get loans for spring planting with interest rates at their current levels, this new law telling them tnat they will have to spend this much time and produce absolutely nothing but paper is a real slap in the face.

Mr. Chairman, beyond the questions of whether or not the new contemporaneous record-keeping requirements go overboard and hurt small business, there are other points your Committee should consider. First, we have no specific and accurate revenue estimates that I'm aware of to tell us whether or not these new requirements will actually generate any new revenues. The last time I looked for such estimates, I found that only the Joint Committee on Taxation has produced such numbers. But the JTC's estimates also include other related provisions of last year's tax bill, such as depreciation limits on the use of luxury cars. I cannot tell how much of the estimated $150 million and $233 million in fiscal years 1985 and 1986, respectively, is derived frcm each of the many sources that the JTC has lumped together in coming up with these estimates. I would hope that the Committee would research this carefully. I think you will find that increasing the paperwork that a small business man or woman has to fill out will not necessarily result in any greater revenue to the Treasury. As long as the claim is an honest one—which I believe most are—the same deductions can still be taken. In fact, there might even be a loss to the Treasury, as people are required to spend more time on nonproductive endeavors such as filling out log-sheets, when they could be working and producing.

The second point the Committee should consider was brought out very well in a recent "dear colleague" from our colleague Representative Horton, a member of the Federal Paperwork Commission. Mr. Horton's point was well made that these new

regulations represent a reversal of the progress we have made over the past decade in trying to reduce the amount of time and paper that face taxpayers. Mr. Horton carries his point further and suggests that Members support legislation introduced by our colleague Representative Anthony, which is identical the Roemer-Bliley legislation.

I would like to make a third and final point to conclude Mr. Chairman. We all know how this provision came to be part of the law. And I do not quarrel with that. But your Committee and the Congress must insist that it is the proper role of the Congress alone to pass legislation and to make amendments to that legislation.

On January 23, incoming Treasury Secretary Baker commented in his confirmation hearings that Treasury would do something about these regs. In two days, the Internal Revenue Service issued a press release which indicated that significant revisions would be made to the October regulations which would carve out broad exemptions and satisfy the critics of contemporaneous record-keeping.

On the basis on the IRS comments, I do not feel that the anticipated revisions would go nearly far enough to satisfy our problems. Further, the proposed revisions that IRS will produce seem to further complicate an already confusing matter.

But the most important issue to be addressed regarding the IRS is whether the IRS has the authority to change the law—not just the regulations implementing the law. And I am particularly concerned that, in the past month, we have faced a situation where the IRS has actually been working to undercut an effort of Congress to respond to a groundswell of public support for repeal legislation. I think that this puts the IRS in the role of lobbying the Congress and undermining its directives and its legislative efforts.

Mr. Chairman, we had a poor compliance record with pre-1985 law. But we have used a cannon to kill a gnat with these new contemporaneous record-keeping requirements. Further, as the IRS's revisions to its October regs grow, an even more cumbersome process takes shape. All the while, America's small businessmen and women suffer because Congress and the Federal bureaucracy have done a poor job.

The only way we can accomplish all of our goals—increase compliance, reduce paperwork and regain the trust of our constituents—is to repeal contemporaneous record-keeping and go back to the drawing board.

Again, Mr. Chairman, thank you for bringing this matter before your Committee.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions? If not, thank you very much.

Congressman Roemer, welcome to the committee. We look forward to your testimony.

STATEMENT OF HON. BUDDY ROEMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. ROEMER. Thank you, Mr. Chairman, and thanks for having these hearings.

My colleague from Ohio, Tom Luken, and I sent around a letter in response to the latest revisions by the IRS—I am sure not the last revisions but the latest revision—some 70 pages about the feelings of Members of Congress about whether the provisions temporized the regulations enough for their acceptance. We have 157 signatures, all Members of Congress, saying that the latest round of provisions, when judged by those who they would affect, say it is not good enough.

Second of all, Mr. Chairman, I am not a member of your committee, and I respect the work that you do. I am a member of the Small Business Committee, the Banking Committee and started working on this contemporaneous accounting problem some months ago. I introduced, along with 58 cosponsors, H.R. 600. H.R. 600 now has the support of 174 signed cosponsors and we are climbing each day. Our goal, Mr. Chairman, is a complete repeal of section 179(b). It is our feeling that when this contemporaneous accounting was introduced into the law that three questions should have been answered. They were not.

No. 1, how much money are we talking about? What was the loss in revenue that should have been handled by the new provisions in the section?

We asked and looked at the record during the hearings on the Deficit Reduction Act. If credible evidence had indicated cheating on a massive scale, the issue would have been different. When we read the record and questioned the Ways and Means staff, the Senate Finance Committee, the Joint Tax Committee, and the Internal Revenue Service, we found a complete lack of evidence on records of noncompliance. In fact, we found a genuine surprise that a problem even existed. It seems that in a well-founded desire to curb the obvious uses by some luxury car users, the law of unintended consequences took over and these provisions—unworkable on any level—were extended to include farmers, sales and service people, small business owners, firemen, policemen, ambulance drivers, computer owners, and countless others.

In short, the question of "How much money?" was never asked nor answered.

My second question was, "Is legislation necessary?" In other words, could the Congress, as some members of this committee already advised, simply leave the problem to the IRS and hope that it would solve things. Looking at the testimony, that does not seem possible. I went to the dictionary to find the specific definition of "contemporaneous." I found only one. It reads: "existing, occurring or originating during the same time."

After this, it becomes clear to me the IRS had, to say the least, added new complexity in its application of the law. But the original problem does not lay with IRS. It is with the law itself. It is with us.

Finally, my third question was, "Can legislation be drawn which will not reduce the gains made by the luxury car provisions, which I support, but will provide relief from the recordkeeping burdens?" The answer was and is "Yes." The previous standard of "adequate records or sufficient corroboration" allows plenty of room for reasonable but effective enforcement. We should return to it and that is what H.R. 600 and other repeal measures would do.

In his announcement of this public hearing, you, Mr. Chairman, indicated that "the committee is interested in learning what specific additional burdens associated with the new recordkeeping requirements remain in light of the revisions to the original temporary regulations." Therefore, in my role as a member of the Government, I would like to focus on these problem areas, both practical and philosophical, and this is my concluding statement.

First of all, the law and the subsequent regulations have once again increased the complexity of the Tax Code. Let me say it again. At a time when the Tax Code is being fairly criticized as being both unfair and unclear, this regulation and its attempt at modification by the IRS adds to complexity.

Second, the requirements were originally suggested as a means of forcing greater compliance. They don't do that now. By removing recordkeeping requirements for some categories of taxpayers, the new regulations would foster a system in which many could deduct 70-percent usage of a vehicle with little or no substantiation requirement. This would neither encourage compliance on the part of

those who were cheating under the old system nor seem equitable to those paying their own share. Compliance would be down, not up in the new law.

Third, the new regulations virtually ignore several categories of listed property. They deal primarily with vehicle mileage. For the first time in America, last month there were more computers sold in this country than automobiles. The new regulations do not even deal with that kind of physical asset. They do not go near far enough. The application of the word "contemporaneous" is, and in the future will be, far broader than most people realize. Mark my words—if we don't correct the problem now and correct it for all property, we will be held responsible. We are at fault.

Fourth, several ballpark figures have been used in previous hearings on the subject. Regarding the income raised by stricter compliance provisions, annual figures in the neighborhood of $120 million have been used. Estimates of the annual cost of the compliance range from $1.2 billion to $7 billion. How about that for a cost-benefit ratio? We get $120 million and we ask America to spend $7 billion. No wonder the budget is out of control. The new math has cut its throat.

Finally, the broader context within which this entire discussion must take place involves the relationship between a Government and its people—the relationship between a Government and its people. With these provisions has come a perception of wrongheadedness, and a perception of inequity which will do nothing but lower the respect each citizen has for the law and for those who make it. I am talking about me now. Unfortunately, much of the damage is irreparable. Through this law and its accompanying sets of regulations, we have told America its Government believes most to be guilty until proven innocent, that no common standard of reasonability can stand up to Federal dictates. If we allow the law to stand, we are telling America its Congress no longer respects the right of fundamental representation. If any Members feel I am overstating the case, I would urge them to return to their office and read their mail. Simply put, this time we have gone too far. It is not too late. We can reverse the tides of complexity and inequity by simply admitting that we made a mistake and repealing this law. These are words a politician never like to use. We were wrong. We made a mistake.

Thank you, Mr. Chairman.

[The prepared statement follows]

STATEMENT OF HON. BUDDY ROEMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

First of all, I would like to thank the Committee and its Chairman for holding these hearings and for allowing me to appear on behalf of the people of the 4th Congressional District of Louisiana. I hope that the hearings will be constructive, and that we in the Congress will be able to stand up and admit the mistake which causes us to be here today.

As you may know, my legislative involvement with this issue began near the start of this session when I, along with 58 cosponsors, introduced H.R. 600. This bill would simply repeal the contemporaneous record keeping provisions which were passed as part of the Deficit Reduction Act of 1984. Right now, my bill has the support of 167 other members. Some 23 other measures for repeal have also been introduced, and to date more than 250 Members of Congress have indicated their support by cosponsoring at least one repeal bill. As the author of H.R. 600 and on behalf of

all other members who seek repeal, my central request today is that the Committee hear our collective message, choose a repeal vehicle from the many offered, and report it to the floor for immediate action.

In support of this request, I would like to offer the following for your consideration:

Before introducing my legislation, I wanted three questions answered. First, I wanted to know what level of abuse warranted this kind of approach. In other words, how much money were we talking about. Obviously, if during the hearings on the Deficit Reduction Act credible evidence had been offered indicating cheating on a massive scale, then the issue would be different. However, what I found in reading the record and in questioning the Ways and Means Committee, the Senate Finance Committee, the Joint Tax Committee and the Internal Revenue Service was not only a complete lack of evidence, but a genuine surprise that a problem even existed. It seems that in a well founded desire to curb the obvious abuses by some luxury car owners, the law of unintended consequences took over and these provisions—unworkable on any level—were extended to include farmers, sales and service people, small business owners, firemen, policeman, ambulance drivers, fisherman, computer owners, and countless others.

On short, the question of "How much money?" was never asked.

My second question was "Is legislation necessary?" In other words, could the Congress, as some members of this committee have advised, simply leave the problem to the IRS and hope it would solve things. My first reaction to the question was based purely on emotion, so I went further. I read the conference report to determine congressional intent. Among its comments were the following:

". . . taxpayers are required to substantiate by adequate contemporaneous records any investment tax credit or deduction with respect to the business use of listed property . . ."

"If the taxpayer does not have adequate contemporaneous records, no credit or deduction is allowed with respect to that item."

"With respect to automobiles, logs recording the date of the trip and the mileage driven for business purposes must be kept."

". . . any portion of an underpayment of tax attributable to a failure to comply with these contemporaneous recordkeeping provisions is treated as due to negligence in the absence of clear and convincing evidence to the contrary."

I then went to the dictionary to find the specific definition of "contemporaneous." I found only one. It reads: "existing, occurring, or originating during the same time." After this, it became very clear to me that the IRS had, to say the least, added new complexity in its application of the law. But the original problem lay within the law itself, that is, with the word "contemporaneous."

Finally, my third question was "Can legislation be drawn which will not reduce the gains made by the luxury car provisions, but will provide relief from the recordkeeping burdens? "The answer was, and is, simply yes. The previous standard of "adequate records or sufficient corroboration" allows plenty of room for reasonable, but effective, enforcement. We should return to it, and that is what H.R. 600 and the other repeal measures would do.

Now, in his announcement of this public hearing, Chairman Rostenkowski indicated that "the Committee is interested in learning what specific additional burdens associated with the new recordkeeping requirements remaining light of the revisions to the original temporary regulations." Therefore, in my role as member of a government, I would like to focus on those problem areas, both practical and philosophical, which remain.

First of all, the law and subsequent regulations have once again increased the complexity of the tax code. Leaving aside the problems created by two sets of regulations in less than two months, the new thresholds, partial exemptions, and new definitions stemming from 179(b) have created another identity crisis for taxpayers who must determine who they are in the eyes of the IRS. In addition, these requirements are exactly contrary to the positive spirit of tax reform which even the Chairman of this Committee has expressed.

Second, these requirements were originally suggested as a means of forcing greater compliance. However, by removing recordkeeping requirements completely for some categories of taxpayers, the new regulations would foster a system in which many could deduct 70 percent usage on a vehicle with little or no substantiation required. This would neither encourage compliance on the part of those who were cheating under the old system nor seem equitable to those who were paying their fair share.

Third, the new regulations virtually ignore several categories of listed property. According to the Deficit Reduction Act, contemporaneous requirements are extended to cover:

"(i) any passenger automobile, (ii) any other property used as a means of transportation, (iii) any property of a type generally used for purposes of entertainment, recreation, or amusement, (iv) any computer or peripheral equipment, and (v) any other property of a type specified by the Secretary by regulations."

In other words, the application of the word "contemporaneous" is, and in the future will be, far broader than most people realize. Mark my words, if we don't correct this problem now, and correct it for all property, we will be held responsible.

Fourth, several ballpark figures have been use in previous hearings on this subject. Regarding the income raised by stricter compliance provisions, annual figures in the neighborhood of $120 million have been used. Estimates of the annual costs of compliance have ranged from $1.2 billion to $7 billion. We would do well to remember that most figures associated with compliance are deductibles themselves, and that a very real possibility exists for these new provisions to lower revenue.

Finally, the broader context within which this entire discussion must take place involves the relationship between a government and its people. With these provisions has come a perception of wrongheadedness and inequity which will do nothing but lower the respect each citizen has for the law and for those who make it. Unfortunately, much of the damage is irreparable. Through this law and its accompanying sets of regulations, we have told America that its government believes most of it to be guilty until proved innocent, that no common standard of reasonability can stand up to federal dictates. And, if we allow the law to stand, we are telling America that its Congress no longer respects the fundamental right of representation. If any members think that I am overstating the case, I would urge them to return to their offices and read their mail. Simply put, this time we have gone too far.

It is, however, not too late. We can reverse the tides of complexity and inequity by simply admitting that we made a mistake and repeal this law.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions?

Mr. ROEMER. Mr. Chairman, I have a list of cosponsors. It is balanced. It is getting close to 218.

Chairman ROSTENKOWSKI. Thank you.

The Chair calls Congressman Gekas.

STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GEKAS. Thank you, Mr. Chairman. I too have a written statement I wish to offer for the committee.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Welcome to the committee.

Mr. GEKAS. There is only one recommendation which can make any sense at this juncture and that is repent and repeal. We have made a gigantic mistake and we must atone for it. Let us repent and repeal. I say that with an honest feeling that no matter what the salutary effect intended in the new regulations which have been published as of February 20, I hold these up for your examination as being a replication of those held up by Representative Anthony as the first set and find they are just as complicated and just as perplexing as the first.

If the summary is a modicum of relief for those people who have been adversely affected by the original regulations. I accept that, but if you read even peripherally through the new regulations, you find perplexing language in there that is sure to bring us a new barrage of letters, cards, and telegrams like:

The employer may treat the automobile used 70 percent for business and 30 percent for personal purposes, the employer must also determine the amount included

in employees income in the automobile for personal use. It is thought the employee should have the opportunity to document a greater amount of business use and thus reduce the amount of the taxable fringe benefits. Comments are requested as to whether the regulations should require the employer to notify an employee if the employer is using one of the methods described in section 1. Section 1.27416.

Repent and repeal, I repeat, because the new regulations cry out for newer regulations, and that means a continuation of the perplexity. Let's begin with a blank sheet and start all over again. We will not loose indeterminate amounts of revenues. We will simply save our taxpayers a great deal of expense. I, too, can give you a litany of the horror stories including one from a chief of police who feels he is aggravated by this. I am not sure he is on solid legal grounds but just the horror story he gives he would have to mark personal use as compared to one where he grabs his car and runs to an emergency police action really sets forth the nonsensical portions. Repent and repeal.

I have not seen a reaction except from Congressman Schulze. I too want very much to implement the original purpose of the act, and that is to do something about the luxury automobiles, but let's begin with them and end with them and leave everything else to the established way that we were doing business before. The necessary and ordinary business expense portion that we are trying to move toward is being exacerbated by increased CPA fees, lawyers fees, and all other kinds, so we are losing money on that side of the ledger while trying to pick up something on the luxury automobiles. Let's just concentrate on luxury automobiles.

Repent and repeal.

Thank you, Mr. Chairman.

Mr. SCHULZE. Amen.

[The prepared statement follows:]

STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

I first want to express my appreciation to the Ways and Means Committee for holding these timely hearings on an issue of major concern to businesses across the country. I am glad to be provided the opportunity to express the views of my constituents on the tax recordkeeping requirements promulgated by the Internal Revenue Service for business use of an automobile.

It is obvious that the problems created by the IRS' recordkeeping requirements are great; over 27 pieces of legislation have been introduced in the House and the Senate to repeal these burdensome regulations. Over 200 other Members of Congress have also expressed their opposition to these regulations by cosponsoring one or more of these bills. I believe that Congress has realized the mistake it made by the inclusion of this provision in the Deficit Reduction Act. I now feel that it is time for them to act to repeal these provisions.

The response of my constituents and the constituents of many other Members of Congress has been overwhelming. I have received hundreds of phone calls and letters about the new rules in the past few months. I have included portions of these letters from my constituents throughout this statement because I believe that they provide an accurate gauge of the public's attention towards the new IRS regulations.

The great response from my constituents and the constituents of many of my colleagues clearly display that the strong feelings of opposition to these regulations are not going to dissipate until Congress takes prompt action to repeal the contemporaneous recordkeeping requirements for business use of automobiles. Such legislative action is both appropriate and necessary because the cost and burdens imposed by the new law dictate repeal and because it appears that the Internal Revenue Service fails to recognize the magnitude of the problems created by its regulatory action.

As we all know, on January 25, 1985, the Internal Revenue Service announced its intention to issue temporary and proposed regulations modifying the requirement to

keep adequate contemporaneous records for automobiles and certain other vehicles. Although the Internal Revenue Service continually assured my office that these regulations would be published any day, they were not published until February 20, 1985. I cannot help but feel that these proposed regulations will only eliminate some of the inconvenience that these regulations have created. After reviewing these proposed regulations, I believe that businesses and farmers will still be burdened with increased paperwork and man-spent hours adhering to these regulations, a result totally counterproductive the the intents of the Deficit Reduction Act and the 98th Congress; to increase our economic productivity.

We should not place all of the blame for these regulations on the Internal Revenue Service. History dictates that over-excessive legislation will undoubtedly produce overexcessive regulations. It was the Congress, after all, that gave the Internal Revenue Service total free rein in the interpretation and implementation of this provision. The proposed regulations, even as the Internal Revenue Service proposes to modify them, are at once needlessly far-reaching, complex, and vague.

The "adequate contemporaneous" recordkeeping requirements are unreasonable, overly-burdensome, and counterproductive, and raise a large number of practical impediments to compliance for affected taxpayers which bespeaks a failure by the Internal Revenue Service to comprehend the realities of everyday business activity. As one of my constituents wrote:

"I just wanted to let you know I almost drove off the road the other day on the way to work. After shoveling off the snow, I was in a hurry to get going and get in to work on time. After a mile or two I realized that I had forgotten to write down the actual mileage of my car prior to leaving the garage. So that I wouldn't forget to do it, I took my daily log out from under the seat and jotted down the mileage at which I had started; and as I looked up, I was halfway into a turn and almost missed it."

Although I realize that this example may be somewhat exaggerated and dramatic, the main point of the comment is nonetheless very relevant and accurate. These regulations require excessive and unnecessary recordkeeping.

The fact that abuses existed under prior law cannot be questioned. Nonetheless, the vast majority of my constituents affected by the new regulations certainly do not drive "luxury automobiles" and have been accounting for the use of their company cars in a detailed and satisfactory manner under current auditing standards.

The new and additional recordkeeping requirements now imposed for the use of a company-owned or leased vehicle are simply unnecessary and harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses, many of which can be found in my district as well as everywhere else in the country, simply cannot afford these additional government imposed paperwork regulations if they are to maintain a competitive position in the marketplace.

The Internal Revenue Service refuses to acknowledge that the maintaining of adequate contemporaneous records creates too severe a burden on business. However, the great amount of Congressional opposition to these initial regulations brought about the proposed revisions of the requirements, which have finally been published in the Federal Register after a month's time. The fact that the Internal Revenue Service clearly was dragging their feet on this matter makes me question the seriousness of their intentions to help relieve some of the burdens that have been placed on this country's businesses. Can we really assume that these proposed regulations will be the last we hear of the many problems that our constituents are having?

A sampling of the comments I received from hundreds of my constituents about the recordkeeping regulations is instructive for the points they make and the problems they underscore . . . practical problems such as loss of productive time, vehicle use for more than one employee, and vehicle and employee tranfers which merit careful examination by this committee, which had the foresight to hold this hearings, and by the Congress as a whole.

A constitutent from Harrisburg states that: "I wish that some of the people in government would spend one month in business to experience the burdensome reports that we are already required to file with the various agencies of the government. We do not need any more regulations requiring further reporting and tabulation. It is almost as if the government were trying to prevent small business from being able to actively compete with their larger counterparts."

A Chief of Police in my district voices similar sentiments: "Whoever dreamed this regulation up fails to realize that a Chief of Police is first of all never off duty. He needs his vehicle because of its radio equipment and other police equipment he may keep on hand in the event he gets called out in the middle of the night, a weekend

or holiday. When he leaves his home and starts the car he turns the radio on and is at work at that moment." . . . "When I left my home even to go to the local ACME store I was armed and the radio was on. I was on duty and perhaps over a 1000 times got involved in police actions that did not occur on weekdays between nine and five. More than 1000 times I was called out at night and if I had to drive my personal car to the police station in order to pick up a car to communicate with my officers if would be a great handicap. Also each time I used my car there was another unmarked police vehicle on the streets of Lansdown protecting the public."

Yet another constituent states: "If you drive a company car and keep a record book in the glove compartment, it is almost impossible to write down every single trip and its purpose and every single expense. There are so many things that can interfere with the keeping of proper records. If you miss several entries then your records are no longer accurate." . . . "There is also the situation when another company employee drives the car assigned to you and does not record the entries. There is also a situation where you drive another company car and someone has taken the record book out of the car."

A restaurant owner wrote to tell me that: "As a principle owner of a small restaurant—a business which takes 50–60 hours of my life each week, a business which is as much a part of my life as my home and family—it becomes impossible to separate "business" and "personal" miles on the truck and van that I use in many many cases."

It could not be more obvious that the new and additional recordkeeping requirements now imposed for the use of a company-owned or leased vehicle are simply not necessary and are tremendously harsh for the majority of taxpayers and will have a negative impact on their business performance and personal productivity. Small businesses like those that comprise the business communities in my district simply cannot afford these additional government-imposed paperwork regulations if they are to maintain a competitive position in the marketplace.

I do not believe that the problems created by these auto recordkeeping requirements can be rectified by the changes announced by the Internal Revenue Service which would exempt certain taxpayers from the recordkeeping requirements and provide safe harbors for others. The proposed regulations simply eliminate some individuals from these disastrous regulations while still leaving whole segments of affected taxpayers unjustifiably burdened by the new rules.

Consequently, I do not believe that anything short of total repeal of the contemporaneous recordkeeping requirements will resolve the practical problems created by the new regulations. I have introduced legislation in this regard, H.R. 589, as have some 27 other members of the House of Representatives and the Senate, and I am hopeful that Congress will act quickly to join together and pass one comprehensive piece of legislation to repeal these regulations. Time is of the essence, for until taxpayers are guaranteed of the total elimination of these regulations, I am sure that many individuals will be fearful to cease maintaining the necessary records.

The contemporaneous recordkeeping requirements for the business use of an automobile imposed by the Deficit Reduction Act of 1984 were a mistake in the abstract and have proven to be even a worse idea in practice as implemented by the Internal Revenue Service regulations. In reality, the costs to business of complying with the new requirements is likely to be greater than the amount of revenue raised by the government as a result of these regulations. Stated somewhat differently, the cost/benefit ratio of the regulations is clearly indisputable and indefensible and they should be repealed. Congress must act quickly to correct its mistakes before it is too late.

In closing, I would like to again express my appreciation to the Ways and Means Committee for providing me with the opportunity to express my views, and the views of my constituents, on this matter. I would also like to again commend the committee for its recognition of a serious problem and its efforts to rectify that serious problem.

Chairman ROSTENKOWSKI. Thank you.

Congressman Reid, welcome to the committee.

STATEMENT OF HON. HARRY M. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. REID. I appreciate very much the opportunity to appear before you to express my support for the Taxpayers Relief Act of 1985 which addresses contemporaneous recordkeeping, among

other things, and will subsequently be implemented by the Internal Revenue Service.

The 98th Congress deliberated and voted on many issues that aroused the emotions of many citizens of this country. There have been and always will be differences of opinion on the important issues that face us as Members of Congress, and I believe that is as it should be. Yet, I cannot think of another piece of legislation that passed Congress in recent years with such good intentions but has brought about such active bipartisan opposition as the section of the Deficit Reduction Act of 1984 requiring adequate contemporaneous recordkeeping regarding the use of business equipment.

The Deficit Reduction Act of 1984 was passed to help reduce the Federal deficit, but it was also intended to close loopholes and increase fairness in the existing code. Unfortunately, the recordkeeping section does not serve that purpose. One of my constituents said to me, and I quote: "I've never felt so guilty trying to prove my innocence."

I have received hundreds of letters and telephone calls regarding this matter. They have come from all over the State of Nevada. I have received complaints from nearly every type of small business that exists in my State. Farmers, ranchers, miners, service companies, florists, delivery services, construction companies, and sales companies are examples of those who have voiced opposition. Yet, as diverse as their businesses are, their expressed concerns are basically the same—the law is unfair, cumbersome, time consuming, oppressive, and unnecessary. To be perfectly frank, those were some of the more pleasant expressions and comments I have heard.

One conversation I had was with the former Governor of Nevada who is now in private business. He told me that he keeps meticulous, time-consuming records because he wants to comply with the law. He also expressed that he has never seen such an open invitation to be dishonest. His opinion was the same as every person who contacted me—"The cure is worse than the disease."

I know each of you have received similar responses from your own constituents. I brought with me a letter received from a small businessman in Las Vegas. He owns a small electrical business. He attached copies of the record for his 10 service trucks for the first 10 days of January 1985. I will make the letter available for the record. You can readily see the nature of the information that is being kept and see that it is, indeed, a cumbersome project and one that could easily be falsified.

Quoting from the letter, I think the businessman's point is well made: "This nonsense may not be the straw that broke the camel's back, but you're making him damn sore."

I can understand the frustration being expressed by my constituents. The law and regulations are turning productive business people into unproductive bookkeepers for the Federal Government administered through the Internal Revenue Service. Although the IRS announced its intention to ease some of the rules regarding the business use of automobiles and farm vehicles, the changes do not go far enough.

We must repeal the contemporaneous recordkeeping requirements and restore the previous standard of "adequate records or

sufficient corroborating evidence" to document claimed deductions. It is the fair and responsible action to take.

We must do so as soon as possible.

Thank you, Mr. Chairman.

[The prepared statement and letter referred to follow:]

STATEMENT OF HON. HARRY REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman and members of the subcommittee, I appreciate very much this opportunity to appear before you to express my support for the Taxpayer Relief Act of 1985 which addresses contemporaneous record keeping regulations being implemented by the Internal Revenue Service (IRS).

The 98th Congress considered, deliberated and voted on many issues that aroused the emotions of many citizens of this country. There have been and always will be differences of opinion on the important issues that face us as Members of Congress and I believe that is as it should be. Yet I cannot think of another piece of legislation that passed Congress with such good intentions but has brought about such active bi-partisan opposition as the section of The Deficit Reductions Act of 1984 requiring "adequate contemporaneous records" regarding use of business equipment.

The Deficit Reduction Act of 1984 was passed to help reduce the federal deficit, but it was also intended to close loopholes and increase fairness in the existing code. Unfortunately, the record keeping section does not serve that purpose. One of my constituents said to me, and I quote, "I've never felt so guilty trying to prove my innocence."

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One conversation I had was with a former Governor of Nevada who is now in private business. He told me that he keeps meticulous, time consuming records because he wants to comply with the law. He also expressed that he has never seen such an open invitation to be dishonest. His opinion was the same as every person who has contacted me," the cure is worse than the disease."

I know that each of you have received similar responses from your own constituents, but I brought with me today a letter I received from a small businessman in Las Vegas. He owns an electric sales and service business. He attached copies of the records for his 10 service trucks for the first 10 days of January 1985. I will make the letter available for the record. You can readily see the nature of information that is being kept and see that it is indeed a cumbersome project and one that could easily be falsified. Quoting from the letter I think the businessman's point as well made, "this nonsense may not be the straw that broke the camel's back but you're making him damn sore."

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We must repeal the contemporaneous record keeping requirement and restore the previous standard of "adequate records or sufficient corroborating evidence" to document claimed deductions. Its the fair and responsible action to take.

We must do so as soon as possible!

Thank you.

DO IT YOURSELF ELECTRIC,
Las Vegas, NV, January 10, 1985.

Congressman HARRY REID,
Longworth House Office Building,
Washington, DC.

DEAR SIR: We are a small electrical contractor and retail store. We employ an average of ten electricians in the field and operate 12 trucks.

Our accountant has informed us that we now have to log all the mileage on all of our vehicles in order to claim gas and repair expenses.

Inclosed is a small sample of the paperwork involved. We find this not only time consuming and expensive but totally asinine. How could any fool think that service trucks are being used for personal pleasure. Small business is overloaded with paper work solely for the covenience of the government. We would not need an accountant, if not to keep the government from stealing the whole hen house.

Please stop and think of the additional work to you, if you had to list all of your government perks as taxable income (considerably more by the way that we in private enterprise receive). This nonsense may not be the straw that broke the camel's back but you're making him damn sore.

If the Government is so desperate for the few dollars this could net you, please get out of our way so that we can be productive, show a profit and pay honest taxes.

Still respectfully yours,

CALVIN A. LOGAN, *President.*

Month Jan. 1985 Susan Logan

TOYOTA PICK UP

Car Mileage & Operating Expenses

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Mileage Breakdown: Business	Mileage Breakdown: Investment	Mileage Breakdown: Personal	Expenses: Gas, Oil, Lube	Expenses: Parking—Tolls	Expenses: Other	Expenses: Describe
1-1	News Years									
1-2	Office supply	10 miles								
1-3	Vegas Electric									
	delivered check	7 miles								
1-4	pick up materials	71605	71628.2							
	packed up offices									
	supplies									
1-4	Office Supply P/U	71609	71629.3							
1-5	Off									
1-6	Off									
1-7	Bank	71759	71764.9							
1-8	Bank	71810								
1-9	P/U materials	7180	71888							
1-10	Bank	71920	71926							

Month Ending Cal Logan Rb Dodge 733 Att

Date 1/1	Day of Week	Destination: From - To / Purpose of trip and person contacted.	Mileage Reading Beginning	Mileage Reading End	Deductible Business Mileage
1/2	[illegible]	RMG - NELLIS APTS RECEIVCAB TRIP PUBLIC STORAGE		55212	on call
		DECATUR PUBLIC STORAGE			
1/2	[illegible]	CITY COUNTY BLDG NELLIS STATS VALLEY INC		55271	on call
		ACCOUNTANT YOUNGLOVE DECATUR PS RYAN ST LOGAN OMSIG			
		MIAMI AIRPORT TERMINAL			
1/4	FRI	RCA NELLIS NELLIS APTS LINE SYSTEMS		55333	
		REX CAST			
1/5	SAT	REX CAST LINE SYSTEMS NELLI APTS		55384	
1/6	SUN	[illegible] TRIPLED			
1/7	MON	NELLIS APTS VALLEY LTD NELLIS APTS SAHARA OFFICE			
		REX CAST POTHOLE PUMP		55428	
1/8	TUES	[illegible] CITY LOAN STATIC YOUNG BLDG		55474	
1/9	WED	CHRISTENSONS MEDICAL BUILD REX CAST			
		REX CAST TRIP EXPRESS LUNCH BURNHAM MEDICAL			
		COUNTY CLARK TAXI YARD CITY BOARD		55536	
1/10	THURS	CHRISTENSEN MEDICAL CITY BUILD KOZAL		55566	

Month: Jan. , 1985 Jay Mathers

78 Toy. BW425 Car Mileage & Operating Expenses

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End
1/01	New Years Day		
1/02	Willis AFB ACe Building Rec. Room		
1/03	" " " " Rec. Room		
1/04	Accom. Kevin		
1/05	Shop None		
1/06	No Work		
1/07	Accom. Kevin		
1/08	" " (Shop)		

Month: Jan, 1985 Kathy Stout

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End
1/3	office to Jagco & back	093203	093214
1/2	0		
1/3	0		
1/4	0		
1/7	0		
1/8	0		
1/9	0		
1/10	0		

Month: January 1985 Edward H. Tomsick

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End
1/2	NONE	0	0
1/3	NONE	0	0
	[redacted]		
1/4	Northampton Hills - Police Service Station	28855	28874
1/4	Service Station	28874	28887
1/7	NONE		
1/8	NONE		
1/9	Doctor's	107	68

TOTALS (Post to Car Recap at back)

Note: Retain receipts for all lodging. Retain receipts for transportation and single expenditures of $25 or more.

6

Car Mileage & Operating Expenses

Mileage Breakdown			Expenses			
Business	Investment	Personal	Gas, Oil, Lube	Parking—Tolls	Other	Describe
0	0	0	0	0	0	NONE
0	0	0	0	0	0	NONE
X	0	0	X	0	0	NONE
X	0	0	X	0	0	NONE
X						NONE

Total reimbursements for month $_____

7

Month: JAN [illegible] 1983 Rick Stout, Dodge

N.U.

Car Mileage & Operating Expenses

Date	BM 5187 Purpose of Trip (Name of Customer Contacted)	Odometer Begin	Odometer End	Mileage Breakdown: Business	Mileage Breakdown: Investment	Mileage Breakdown: Personal	Expenses: Gas, Oil, Lube	Expenses: Parking—Tolls	Expenses: Other	Expenses: Describe
1/2	[illegible]	5389	5424	35						ON CALL
1/3	[illegible]	5424	5456	32			15.52			ON CALL
1/4	[illegible]	5456	[illegible]							
[illegible]	[illegible]	[illegible]	5505.9	49.9			[illegible]			ON CALL
1/5	[illegible]	5505.9	5522.2	✓						ON CALL
1/7	[illegible]	5522.2	[illegible]	✓						ON CALL
1/8	[illegible]	[illegible]	[illegible]	✓						ON CALL
1/6	[illegible]	[illegible]	5611.3	✓			✓			ON CALL

Month: 1 1985 BOB CLOYD

COURIER FED 854-8CV

Car Mileage & Operating Expenses

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Mileage Breakdown: Business	Mileage Breakdown: Investment	Mileage Breakdown: Personal	Expenses: Gas, Oil, Lube	Expenses: Parking—Tolls	Expenses: Other	Expenses: Describe
11	NEW YEAR'S									
12	SAINT OFF. EQUIP	56270	56274	4						
13	NOT USED									
14	DAY OFF									
15	SAINT OFFICE / ALLEN NEL	56274	56290	16						
18	ALLEN NEL House	56290	56319	29			14.49			
19	ALLEN NEL House	56319	56335	16						
TOTALS										

(Post to Car Recap at back)

Total reimbursements for month $ _____

Keep Receipts for Expenses. Retain receipts for transportation and lodging expenses of $25 or more.

8

7

Month: Jan, 1985 Kevin 78 Toyota 4/4 RV1225 Car Mileage & Operating Expenses

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Mileage Breakdown: Business	Mileage Breakdown: Investment	Mileage Breakdown: Personal	Expenses: Gas, Oil, Lube	Expenses: Parking—Tolls	Expenses: Other	Expenses: Describe
1/1	New Years Day									
1/2	Nellis AFB	62540	62560	✓						
1/3	Nellis AFB	62560	62580	✓						
1/4	Gas Station, Nellis Arts.	62580	62636	✓			✓			
1/5	Off	62636	62636							
1/6	Off	62636	62636							
1/7	Nellis Arts.	62636	62659	✓						
1/8	Nellis AFB	62659	62694	✓						
1/9	Las Vegas Swap Meet, Dump Stop, Nellis Arts, Post Exchange, Smiths Store, Nellis Arts, White Sands Stop	62694	[illegible]	✓						
	Ex Nellis Arts		62771	✓						

Month of [illegible] 1985 ALAN D LARASIL 78 Toyota #BL7592 Car Mileage & Operating Expenses

Day	Destination (Name of Person Contacted)	Odometer Begin	Odometer End	Mileage Breakdown: Business	Investment	Personal	Expenses: Gas, Oil, Lube	Parking—Tolls	Other	Describe
1/85	NEW YEARS DAY			✓						ON CALL
2/85	GAS STATION TO HUYERS OFFICE	79004?					GAS			
3/85	ALPINE ALLEN NOL'S HOUSE		79082	✓						ON CALL
3/85	ALLEN NOL'S HOUSE	79082	79060	✓						ON CALL
4/85	ALLEN NOL'S HOUSE ALPINE	79060	79089	✓						ON CALL
7/85	ALLEN NOL'S HOUSE AUTO PARTS	79089	79115	✓			WIPER BLADES			ON CALL
8/85	WAREHOUSE HOUSE ALLEN NOL'S	79115	79125	✓						ON CALL
9/85	WAREHOUSE HOUSE ALLEN NOL'S	79125	79169	✓						ON CALL
10/85		79169								

TOTALS [illegible] (Car Recap at back)

[illegible] for transportation and

10

Total reimbursements for month $_____

11

Month: JAN 1985 '86 Chev. Van

Date	Destination — Purpose of Trip — Contact	Odometer Begin	Odometer End
1/2	[illegible]	[illegible]	[illegible]
1/3	[illegible]	[illegible]	[illegible]
1/4	[illegible]	[illegible]	[illegible]
1/4	[illegible]	[illegible]	[illegible]
1/4	Excelsior Springs Trip	[illegible]	[illegible]
1/7	Keltner - Domarco	89631	89727
1/8	Western Cab	89727	
1/8	Gas Phillips		
1/8	Keltner Domarco		89761
1/9	Dr. Christensons	89761	
1/9	Western Cab		89776

Car Mileage & Operating Expenses

Mileage Breakdown			Expenses			
Business	Investment	Personal	Gas, Oil, Lube	Parking — Tolls	Other	Describe
✓						
✓						
✓						
✓						
✓						
✓						
✓			✓			
✓						
✓						
✓						

Ford P.U. Truck 923 AKR

Mickelwait

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Mileage Breakdown: Business	Maintenance	Personal	Expenses: Gas/Oil/Lube	Parking—Tolls	Other	Describe
1/1/85	[redacted]	[redacted]	[redacted]							
1/2/85	[redacted]	[redacted]	[redacted]	✓						
1/3/85	[redacted]	[redacted]	[redacted]	✓						
1/4/85	[redacted]	[redacted]	[redacted]	✓						
1/5/85	[redacted]	[redacted]	[redacted]	✓						
1/6/85	[redacted]	[redacted]	[redacted]	✓						
1/7/85	[redacted]	[redacted]	[redacted]	✓						
1/8/85	Young WH.S.E	79	89	✓						
1/9/85										
1/10/85										
TOTALS	(Post to Car Record Book)									

Month: September 1985 Jon Cruson

Ford, PU 1983 AKP

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Business	Investment	Personal	Gas, Oil, Lube	Parking/Tolls	Other	Describe
W 4	No Mileage		0							
5	Public Storage Shop		40 Mi							On Call
6	Public Storage Shop		45	✓						On Call
7	Public Storage Shop		45	✓						On Call
8	Public Storage Shop		40	✓			Maintenance			On Call
9	Public Storage Shop		65	✓			[redacted]			On Call
10	Public Storage Shop		25	✓	16	9	18.00			On Call
										On Call
TOTALS	(Post to Car Recap at back)									

Total reimbursements for month $

6

7

Month: January 1985 for Marathon R.R. Inc.

Day	Purpose of Campaign	Odometer Begin	Odometer End
1	[illegible]		
2	[illegible]	20	
3	[illegible]	20	
4	[illegible] BEECHLER	73860	73902
5	BEECHLER	73902	73942
7	[illegible] KORAL	73942	73985
14	[illegible] TIRE CENTER	73985	73998
29	[illegible]	73998	74015

Month: Jan, 1985 Kat Marshall

Car Mileage & Operating Expenses

Date	Destination—Purpose of Trip—Contact	Odometer Begin	Odometer End	Mileage Breakdown: Business	Mileage Breakdown: Investment	Mileage Breakdown: Personal	Expenses: Gas, Oil, Lube	Expenses: Parking—Tolls	Expenses: Other	Describe
1/15	[illegible]									
1/2	[illegible]									
1/3	[illegible]									
1/4	[illegible]									
1/5	[illegible]	10714	11002				✓			
1/6	[illegible]					✓				
1/16	[illegible]			✓						
1/7	[illegible]	11016		✓						
1/8	[illegible]	11023		✓						
1/9	[illegible]	11045		✓						
1/10	[illegible]	11053	1068	✓						
1/11	[illegible]	11065								

Chairman ROSTENKOWSKI. Thank you.
The Chair calls Congressman Rowland.

STATEMENT OF HON. J. ROY ROWLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. ROWLAND. Thank you, Mr. Chairman. I have a statement I wish to submit for the record.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. ROWLAND. I want to say that last November after my accountant visited a seminar, he learned what the Internal Revenue Service was to do with contemporaneous recordkeeping. I wrote a letter to you and Secretary Regan at that time pointing out the problems. Last year, this matter got very little attention.

After the first of the year when people began to talk to their accountants and learned what was to take place, there was a great deal of concern expressed by my constituents. I had an opportunity to talk to group of farmers in Georgia, and while they were concerned about the low prices they were getting for their commodities and the high costs, they wanted to talk about the recordkeeping that the IRS said they would have to do. The following Sunday at church, I noticed my pastor seemed to be looking at me during the course of the sermon a good deal and, immediately after the service, he motioned to me and said, "I want to talk to you about the recordkeeping."

Many people have been talking to me about the recordkeeping, and I know the IRS is beginning to back off from what it initially proposed. But the changes that are being proposed still do not address the problem. They are talking about giving businessmen an automatic 70 percent business deduction. There may be some people who would use their automobiles more than 70 percent of the time. They will still have to keep the log. There may be some that use them less than 70 percent of the time, so they will be getting a tax break they really do not deserve.

Mr. Chairman, I appreciate the hearing you are holding here today and I hope the Congress will be able to overrule the Internal Revenue Service and go back to the reconstruction of records rather than the contemporaneous records now being proposed.

Thank you very much for this opportunity.

[The prepared statement follows:]

STATEMENT OF HON. J. ROY ROWLAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, members of the Committee, thank you very much for scheduling this hearing today. Since I was scheduled as the fourteenth Member to testify before you, I think it is more than apparent that the vehicle recordkeeping requirements are a major concern to Members of Congress.

A few weeks ago, I had the opportunity, along with some of the same colleagues who have spoken today, to testify before the Small Business Committee. At that time, I mentioned how frequently complaints over these recordkeeping requirements have been brought to my attention by constituents of every type occupation.

Mr. Chairman, the reason I am recalling the circumstances of just a few weeks ago is that I fear they have changed, and for the worse.

On February 20, 1985, the Internal Revenue Service published the long-awaited modifications on vehicle logkeeping. This was of course done in two parts, one notice withdrawing the old regulations and a second notice announcing the proposed modi-

fications. Just as I had feared, the announcement of these proposed modifications has resulted in what I perceive to be as reduced momentum for legislation, such as I have cosponsored with Congressman Roemer.

Although I have encouraged all of my constituents to use the public comment period and let the IRS know how they feel about these proposals, I am seriously concerned that the IRS modifications will effectively make a bad situation worse.

As I understand these modifications, taxpayers will be offered options for getting out from under the burdensome "contemporaneous" recordkeeping. But these options concern me greatly. What appears to be an easy solution to the problems of keeping these detailed records is in reality a windfall for those very people the recordkeeping requirements were aimed at.

If we are to make assumptions about the percentage of time an individual uses his car or truck for business in the manner proscribed by the IRS, we are biasing the law in favor of those who have historically overestimated their business use by granting them an automatic 70 to 80 percent deduction, even if their business use nowhere approaches this amount. And those people who use their vehicles predominantly for business will either have to maintain the records or take less than the amount to which they are entitled as a business deduction.

This approach seems totally backward to me. If the intent of the law and the subsequent regulations is to tighten up on those people that are writing off more of a deduction than they are entitled to so that the Treasury is losing revenue, then it is the honest taxpayers that will either be burdened by recordkeeping or pay more taxes than are necessary under the law.

Unfortunately, in the real world we cannot treat adults as if they are in a classroom environment where an effective technique for stopping cheating is to punish the whole class so that peer pressure will force the guilty students to stop cheating. It is not only not that simple, it is not possible to force compliance with the laws of this country by punishing the law-abiding citizens . . . or in this case, making law-abiding citizens lawbreakers.

We also have another tradition in this country which I believe is important to mention here, and that is that citizens of this country are innocent until found guilty. These onerous recordkeeping requirements presuppose the guilt of all taxpayers who use their vehicles for business and this is wrong.

Mr. Chairman, I have heard that this Committee intends to work on a tax simplification proposal and I can certainly think of no better example of where the tax code is too cumbersome. I think the most telling event supporting this is a new business venture I heard of the other day. It seems that an audio-visual company is planning a video cassette explaining recordkeeping.

If this is so, our tax laws have reached the point of absurdity when the people of this country cannot possibly understand what is required of them in order that they not unwittingly break laws.

If the purpose of our tax system is to generate revenue and stimulate economic activity, the recordkeeping requirements do neither. And if it is the intent of this Committee to revise the tax code to generate revenue and stimulate economic activity, the repeal of the recordkeeping requirements is, in my opinion, the best place to start.

Thank you for this time today for me to share with you some of my thoughts and the views of my constituents.

Chairman ROSTENKOWSKI. Thank you.

Congresswoman Lloyd, welcome to the committee.

STATEMENT OF HON. MARILYN LLOYD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Ms. LLOYD. Thank you very much.

We do appreciate the opportunity to appear before you to address the issue of contemporaneous recordkeeping. It is a most appropriate subject for your hearings today, and we commend you for this. We are hearing repeal and repent, but we are also hearing, "Congresswoman, you are going to make a bunch of liars out of us."

The contemporaneous recordkeeping requirement has done nothing but create confusion since it has presented employers with an administrative nightmare. Others are going to speak to you today more directly as to the scope of the compliance procedure. But I do

not think an indepth understanding of tax law is required to recognize the mistake of what we have done, so you are doing a great service by initiating this hearing today.

Certainly in the frame of tax reform a review of recordkeeping under previous law is in order. We do not advocate abuse of the code. We think there was room for abuse. But the 1984 bill does not achieve the objective. What it has done is to impose a confusing burden on just about everyone. Legislation such as I have introduced would put an immediate end to the contemporaneous recordkeeping requirement. As part of a more comprehensive tax review, perhaps all of the factors which are involved in record compliance will be reviewed. Only then, and only if widespread noncompliance warrants, can previous changes in the law be brought before the House.

There is one constant I have heard in the Third District of Tennessee and it is that we are lacking concise definitions and a determination of what it is we want the Tax Code to achieve with recordkeeping requirements. We are reaching out blindly to catch abusers of the previous law, but we lack a clear understanding—and I emphasize clear—means of doing so. This provision opens up for question the countless methods by which business operates and yet it never really defines, for example, what constitutes working out of the home. With the technology now available to us, it is not unusual for employees of a number of enterprises to work out of their homes, so the distinction between business and personal use deserves closer examination before the delineation outlined in the contemporaneous record requirement is saddled upon the working people of this country. Such specifics have not been considered and yet the IRS is issuing regulations.

The regulations of February 21 are an improvement, but there are many questions and inequities that still remain. Our concern of how they will be resolved is certainly not insignificant. The February 21 regulation should not be imposed, particularly on our small business people, Mr. Chairman, because so many of them do not have the accountants and consultants needed to comply. The cost to business certainly exceeds by far the return to the Treasury, and such unreasonable requirements beg failure to comply and even stronger distaste for the Tax Code.

At this point, I have received a significant numbers of calls for help from business people, primarily auto users who are aware of the requirements. The IRS cannot continue to revise the regulations. However much they improve their efforts, confusion spreads. This requirement is onerous and repeal is the only logical and equitable course of action.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. MARILYN LLOYD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Thank you for permitting me to appear before you today. I think the issue of contemporaneous record keeping is a most appropriate subject for this Committee to consider in detail and I commend you for setting aside the time to do so.

I doubt that one member of either this or the other body could be found who agreed with the Deficit Reduction package in total. But it was urgent that its thrust be approved. Essentially, the House version was a defensible measure and as such it

was passed. Only during conference did we find ourselves with a provision bearing the ponderous name of the contemporaneous record keeping requirement. It has succeeded in creating nothing but confusion since it presents employers with an administrative nightmare. Today, others who are tax attorneys will speak more directly to the scope of the compliance confusion. But an in-depth understanding of tax law is not required to recognize a mistake of such magnitude. The Committee is doing the House a service with this initial hearing.

Certainly in the frame of tax reform a review of record keeping under previous law is in order. We do not advocate abuse of the code and certainly there was room for abuse. But the 1984 bill did not achieve that objective. What it has done is impose a confusing burden on just about everyone. Legislation such as I have introduced would put an immediate end to the contemporaneous record keeping requirement. As part of a more comprehensive tax review, perhaps all the factors which are involved with record compliance will be reviewed. Only then, and only if widespread non-compliance warrants, can truly effective changes in the previous law be brought before the House.

Many of my constituents do feel such a review is in order. But there is one constant running through all the comments I've heard from the Third District of Tennessee and that is we are lacking concise definitions and a determination of what it is we want the tax code to achieve with record keeping requirements. We are groping, reaching out blindly to catch abusers of the previous law, but lacking a clear—and I emphasize clear—concise means of doing so. This provision opens up for question the countless methods in which business is conducted and yet never defines, for example, what constitutes working out of the home. With the technology now available to us, it isn't unusual for an employee of any number of enterprises to work out of the home. The distinction between business and personal use demands closer examination before the delineation outlined in the contemporaneous record keeping requirement is saddled upon the working people of this country. Such specifics have not been considered and yet the IRS is issuing regulations.

The regulations of February 21st are an improvement but many questions and inequities remain—not the least of which is the status of a vehicle taken home by an employee for neighborhood security, or to respond to emergency calls? And what of employees who work a routine business day and who make serveral stops during that day with a company vehicle. These are not insignificant considerations and we can cite many others. The February 21st regulations simply should not be imposed, particularly on small business people, many of whom do not have the consultants and accountants needed to comply. The cost of compliance to business exceeds by far the return to the Treasury. Such unreasonable requirements beg failure to comply and even stronger distaste for the tax code.

But the record keeping requirement does not apply to autos alone. Reference is also made to entertainment and recreation property and to computers. I realize my familiarity with computers is limited, but I cannot conceive of a process by which computer usage could be identified as to business or personal. We cannot in all seriousness expect the American taxpayer to comply with such a requirement. It is beyond me as to how they could without special adaptations.

At this point, I have received a significant number of calls for help from business people who would accept a tightening of previous law but who are baffled as to how they can comply with these regulations. I'm certain that before very much longer, volunteers who can no longer make their needed services available, those who are employed at home and those who use computers for both business and personal use will share the outrage. The protests can only get louder as awareness increases.

The IRS cannot continue to revise its regulations. However much they improve with every effort, confusion spreads. This requirement cannot be justified on the basis of the information now available. It may never be justifiable even after the analysis I have mentioned. The contemporaneous record keeping is onerous. Repeal is the only logical and equitable course of action.

Chairman ROSTENKOWSKI. Thank you.

Congressman Valentine; welcome to the committee, Tim.

STATEMENT OF HON. TIM VALENTINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. VALENTINE. Mr. Chairman I do appreciate this opportunity to express myself on this matter. I appreciate particularly the opportunity to appear before you today and comment on this contem-

poraneous recordkeeping requirement and the effect it will have on many businesses and individuals. I join, Mr. Chairman, with my colleagues who have expressed a similar interest in requesting an immediate repeal of what has become a burdensome and costly task for my constituents and other taxpayers across the country. I introduced H.R. 614 on January 22, 1985 calling for a repeal of the provisions of the 1984 Tax Reform Act relating to the maintenance of the contemporaneous records with respect to the business use of certain property. I have received literally hundreds of letters and telephone calls from my constituents. The objections about the burdens of recordkeeping are not limited to small groups of people who may have abused the Tax Code previously, but are, in my opinion, from a large cross section of American taxpayers.

Our aim should be to simplify the Tax Code and to make compliance less costly for small businesses and farmers. Yet this provision places the greatest burden on this group and will require many of them to add new personnel to keep these records. Farmers, Mr. Chairman, who employ unskilled labor will be particularly burdened. Many of these employees drive pickup trucks associated with farming operations. Yet many of them are not able to keep the required records adequately.

If this provision is permitted to stand, I believe a loss of valuable productivity will occur as a result of this provision of the law. It has been conservatively estimated in testimony before the Small Business Committee that the cost to the consumer is at least $7 billion. That is an incredible price to pay for a relatively small gain in revenue of slightly more than $100 million for the Treasury Department.

I understand the Internal Revenue Service has modified the regulations. The new regulations provide a number of alternatives and modifications to the law's requirements. For example, logs are not required for vehicles used exclusively for business purposes or vehicles not used for personal purposes other than commuting. This would clarify the use of a utility company truck equipped with tools necessary to respond to a power emergency or the elimination of a significant expense of an employer of the need to provide security for, or to garage a vehicle, which, if left unattended, is susceptible to vandalism if parked in a company site.

Although clear improvements have been made in the recordkeeping requirement, the new regulations continue to present employers with a formidable administrative task in complying with the complex and arbitrary rules which clearly result in some unfair tax consequences to employers.

In order to address that specific situation, I have also introduced H.R. 1285, which amends section 132(a) subparagraph 3 of the Internal Revenue Code to add to the list of these entities already excluded, law enforcement, rescue and fire vehicle drivers.

Police, for example, are never truly off duty. They are subject to call 24 hours a day. When they are called to duty, they are required to carry out the responsibilities in vehicles equipped for that duty. In addition, many police officers conduct official business even when they are not formally at work. They serve process papers, assist stranded motorists, and even risk their lives in sudden emergency occurrences.

We take the position that it is unfair for the Internal Revenue Service to define these situations as to place an income tax burden on these people and interfere with the discharge of their duties and responsibilities. I believe there are more reasonable alternatives, Mr. Chairman, expressed in the testimony and the legislation which I have introduced and that which has been presented by my colleagues, and I join with my colleagues in urging the committee to act expeditiously on this issue to end the confusion which exists among many people, trying to comply with regulations which have been revised from their inception. The crime in this case does not fit the punishment and I strongly urge the repeal of this provision.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. TIM VALENTINE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today and comment on the "contemporaneous recordkeeping requirement" and the effect it will have on many businesses and individuals. I join with my colleagues who have expressed a similar interest in requesting an immediate repeal of what has become a burdensome and costly task for my constituents and other taxpayers across the country. Joining with my colleagues, I introduced H.R. 614 on January 22, 1985 calling for a repeal of the provisions of the 1984 Tax Reform Act relating to the maintenance of the contemporaneous records with respect to the business use of certain property.

Mr. Chairman, I have received hundreds of letters and telephone calls from constituents of the Second Congressional District. The objections about the burdens of the recordkeeping simply are not limited to the small groups of people who may have abused the tax code previously, but are from a large cross-section of the American taxpayer.

Our aim should be to simplify the Tax Code and to make compliance less costly for small businesses and farmers. Yet this provision places the greatest burden on this group and will require many of them to add new personnel to keep these records. Farmers who employ unskilled labor will be particularly burdened. Many of these employees drive pickup trucks associated with the farming operations; yet many of them are not able to keep the required records adequately.

If this provision is permitted to stand, I certainly believe a loss of valuable productivity will occur as a result of this onerous provision of the law. It has been conservatively estimated that the cost to the consumer is at least $7 billion. That is an incredible price to pay for a relatively small gain in revenue of slightly more than $100 million for the Treasury Department.

I understand the Internal Revenue Service has modified the regulations. The new regulations provide a number of alternatives and modifications to the log requirement. For example, logs are not required for vehicles used exclusively for business purposes or vehicles not used for personal purposes other than commuting. This would clarify the use of a utility company truck equipped with tools necessary to respond to a power emergency or the elimination of a significant expense for the employer because of the need to provide security for, or to garage the vehicle, which, left unattended, would be susceptible to vandalism in the case it is parked overnight on a company site.

Although clear improvements have been made in the recordkeeping requirement, the new regulations continue to present employers with a formidable administrative task in applying the exceptionally complex and arbitrary rules which clearly result in at least some unfair tax consequences to employers. In addition, the new regulations continue to require employers to increase an employees' wages for tax purposes when the employee takes a vehicle home in the evening for security purposes or to respond to a call. A prime example of this is the treatment of the use of law enforcement, rescue and fire vehicles.

In order to address that specific situation, I have also introduced legislation, H.R. 1285, which amends section 132(a)(3) of the Internal Revenue Code to add to the list of those entities already excluded law enforcement, rescue and fire vehicle drivers.

For purposes of "taxing fringe benefits," the IRS would compute the value of such vehicles to be $4.00 day and the employees would be required to pay income tax on

this amount. This would increase taxable income by some $1,040.00 per year for public service employees.

Policemen, for example, are never truly off duty. They are subject to call twenty-four hours a day. When they are called to duty, they are required to carry out their responsibilities in vehicles equipped for that duty. In addition, many police officers conduct official business even when they are not formally at work. They serve process papers, assist stranded motorists, and even risk their lives in sudden emergency occurrences.

It is unfair for the IRS to define these situations as appropriate to fringe benefit taxation. It is unfair to tax our police and emergency personnel for using, or being prepared to use, a vehicle required for their duty.

Mr. Chairman, I believe a more reasonable approach, such as that in existence prior to enactment of the Tax Reform Act, should be made to apply across the board, treating taxpayers equitably. Such a standard should allow for the use of reason, and not force taxpayers into a particular method documenting deductions, such as the requirement specified in the IRS regulations.

A taxpayer should not be denied a legitimate deduction for a business expense merely for failing to fill out a log if the expenditure can be proven to be for business by other means. If a taxpayer does not have the records and believes he is entitled to the deduction, the regulations in effect might encourage him to do something that he might later regret. I do not believe we should assist in encouraging this kind of behavior.

I join with my colleagues in urging the Committee to act expeditiously on this issue to end the confusion which exists among many people trying to comply with regulations which have been revised from their inception. The crime in this case does not fit the punishment and I strongly urge a repeal of this provision.

Thank you Mr. Chairman.

Chairman ROSTENKOWSKI. Are there any questions? If not, thank you very much.

Congressman Slaughter, welcome to the committee.

STATEMENT OF HON. D. FRENCH SLAUGHTER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SLAUGHTER. I am pleased to appear before this committee today in support of H.R. 600, the Taxpayer Relief Act of 1985. This bill would simply repeal the onerous provision in question—section 179(b) of the Tax Reform Act of 1984—and return us to the more practical documentation procedures accepted by the IRS before this section was enacted; that is, "reasonable reconstruction of expenditures."

This contemporaneous recordkeeping requirement is extremely burdensome and irritating to the taxpayer. It is typical of the kind of provision that should not be in our laws. It will cause substantial increases in taxpayer paperwork costs. It will not raise any additional revenue, as tax evaders who fraudulently reported business expenses in the past could certainly doctor their contemporaneous records now.

In response to public dissatisfaction, the IRS has modified this provision to some extent. These modifications only add to the complexity and confusion of the requirements. In some cases, these modifications would allow more deductions than should actually be allowable; in other cases, the deduction is less than it should be. The IRS-mandated farming and business percentages for deductions are arbitrary.

Complications in the Tax Code such as the ones provided by section 179(b) lessen the public respect for the law. Our tax system is based on voluntary compliance; voluntary compliance is essential for our Tax Code to work in a fair and evenhanded manner. This

provision severely threatens voluntary compliance among our Nation's taxpayers, which is already being weakened due to the incredible complexity of our income tax laws.

The contemporaneous recordkeeping provision is a forceful example of the complex and burdensome aspects of our income Tax Code.

We should be moving toward simplicity, not complexity. The American people want a Tax Code that is fairer, simpler, and more efficient in the collection of revenues due the Government than our present law.

The passage of H.R. 600 by this Congress is very important to avoid a further descent into a morass of useless, costly, and complicated paperwork.

Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Thank you. Are there any questions? If not, thank you very much.

The Chair calls Congressman Glenn English.

Welcome to the committee, Glenn. We are ready to receive your statement.

STATEMENT OF HON. GLENN ENGLISH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. ENGLISH. Mr. Chairman and members of the committee, I am happy to appear before you on behalf of the taxpayers in Oklahoma's Sixth Congressional District who currently face an extremely threatening Internal Revenue Service requirement.

The contemporaneous recordkeeping requirement, more commonly called the vehicle logging rule, has fallen like axed timber onto American taxpayers. Despite efforts to modify the initial logging requirements, the IRS is basically requiring that certain taxpayers hand over a detailed list of how they spend their day in order to qualify for certain tax benefits on depreciation of their business use of automobiles. The requirement is a serious threat to privacy and clearly contradicts efforts to simplify tax provisions and efforts to reduce paperwork. The recent modifications only add to the chaos and confusion without remedying the problem. During the past weeks, I have heard from hundreds of constituents who oppose these provisions and who continue to support their repeal even after the issuance of the modifications.

Businessmen and farmers simply have better ways to spend their time than filling out trip log books to be tabulated at a later time. The modifications now require these folks to spend even more time studying the "if, and/or buts" clauses in the rules to decide just what kind of recordkeeping requirements they qualify for. I am hearing of cases where folks are sacrificing the tax reduction to which they are entitled just so they will not have to keep the record. I am afraid the modifications will result in even more folks throwing up their hands and losing out on something they could otherwise qualify for. I do not feel this was the intent of the law, and I do not feel this is fair. Many, if not most, of these business people and farmers do not hire fulltime accountants to help them keep these kinds of records.

I have been told, Mr. Chairman, that even rural letter carriers must comply even though they drive the same routes every day.

I voted against the passage of this provision, and I feel the best solution now is to repeal the measure before further damage is done. I stand firm in my continued support for legislation which I introduced to repeal the measure. Despite recently announced modifications, the logging requirement only confuses taxpayers and makes tax simplification an even more distant goal. Consequently, I continue to support complete repeal of the logging rule provision. I urge you and committee members to act as quickly as possible to report repeal legislation to the House floor.

Thank you, Mr. Chairman.

Chairman ROSTENKOWSKI. Thank you, Congressman English.

Are there any questions? If not, we thank you.

The Chair calls Congressman Hubbard. We are ready to receive your testimony. Welcome to the committee.

STATEMENT OF HON. CARROLL HUBBARD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. HUBBARD. Thank you, Mr. Chairman and members of the committee. It is indeed an opportunity to appear before you and participate in your hearings on the U.S. Treasury Department's revised temporary and proposed regulations relating to the recordkeeping requirements for automobiles and certain other property.

Mr. Chairman, I personally have received more mail on this issue than any other issue since I have been in Congress these 10 years and 2 months with perhaps the common situs picketing legislation and the 10-percent income being withheld by the bank automatically. This would definitely be one of the top three issues since I have been in Congress for prompting protests from the constituents back home.

I represent the First Congressional District of Kentucky, and my district includes 24 counties comprised of business people, farmers, and others. Mr. Chairman, the outcries I have heard from my constituents about these burdensome, unfair, and unnecessary regulations have been loud, numerous, and vehement. Indeed, I hear on a daily basis by letter and phone calls from the many persons who believe the regulations are totally unfair and are a complete intrusion of the Federal Government upon a working individual.

I agree with the constituents who have contacted me. In fact, I am an original cosponsor of legislation, H.R. 600, the Tax Relief Act of 1985, to repeal the contemporaneous recordkeeping requirement and certain other recently enacted provisions of the Internal Revenue Code of 1954. I am also a cosponsor of another measure, H.R. 535, to exempt agricultural vehicles from these unnecessary regulations.

The questions most asked of me by my constituents include the following: "How can I keep a record of how far I have gone on my tractor—my business vehicle—when the tractor doesn't even have an odometer or mechanism by which to measure the distance?" Or, "How can a business afford to hire the additional people that will be necessary to record and log the mountains of records that are

needed by these Internal Revenue Service regulations?" Or, "How on Earth did Congress pass such a law?"

On February 20, 1985, the Internal Revenue Service issued temporary and proposed regulations modifying its October 24, 1984, requirements to keep adequate contemporaneous records for automobiles and certain other vehicles, including farm vehicles, vehicles used for no personal use, certain business vehicles used for only commuting, and certain vehicles used in sales and service.

As a Member of Congress who voted "No" on legislation passed in the last Congress, for a variety of reasons, I find that I do not have the answers to the questions asked by my constituents about how Congress has passed this law. Furthermore, I have no answer to the latest question asked me by one of the sheriffs in the First Congressional District, namely, about how to relate the new rules to special-use vehicles when an officer of the law is off duty, has his police car at his home, and is requested to respond immediately to an emergency call.

Mr. Chairman, already over half of the Members of Congress have cosponsored repeal legislation. And, although there has been a great outpouring of protest from those who have heard of the regulations, many millions of Americans are totally ignorant of them. They will be irate in 1986 when they file their 1985 income tax returns and are penalized by the Internal Revenue Service for failure to produce these mountains of paper records.

Although I agree that there must be a proper balance between bookkeeping burdens imposed upon taxpayers and the need to insure that any deductions or credits which are claimed by a taxpayer are legitimate, I urge you to find the proper balance.

Unfortunately, unless the proper balance is found, the productivity of our Nation will suffer serious setbacks. Indeed, the people of western Kentucky urge you to dispose of the regulations accordingly and allow them to return to their jobs—whether in the fields, cities, or points in between—and let them continue to be productive members of their communities, not merely keepers of records. The people who have complained to me are not crooks, Mr. Chairman; rather, they are law-abiding individuals who are begging the Federal Government to let them get on with their jobs and their lives, while agreeing to pay their fair share of taxes.

Thank you for your attention and assistance relative to this critical issue that is facing America and western Kentucky.

Chairman ROSTENKOWSKI. Thank you, Congressman.

Are there any questions? If not, we thank you.

The Chair calls Congressman Ron Marlenee. Welcome to the committee.

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. MARLENEE. Thank you for holding these hearings.

Mr. Chairman, we have ourselves a lemon. The longer we try to repair this lemon, the more it is going to cost us. It is going to cost us credibility and the cost of resentment, the cost of complying, the cost of taxpayer revolt. What we have is really and truly a lemon. I don't know whose devious mind came up with this incredible night-

mare, but you can bet if they were in my employment or on my staff, he would be looking for a new job. Compared to the suggestions of some of my constituents out there in Montana that, indeed, would be lenient treatment.

Since the first of the year I have been contacted by hundreds of Montanans urging Congress to repeal these senseless regulations. When the IRS wrote these rules they followed their usual practice of writing regulations that would make the Gestapo proud—assume everyone is guilty and force them to prove their innocence. These regulations represent a massive invasion of privacy.

The IRS has no right to know where you go or what you do or who you see or who you go there to be with. In typical IRS fashion, they designed regulations that are far more heinous of the taxpayer than the tax laws. If these laws were not such an abuse of power, they would be comical. If someone had told any of us here today that the IRS would require the people of this Nation to keep a diary of every trip that they make, every place they visited and the reason for those trips, we would have said in the days of old they were crazier than a bedbug. Yet, that is exactly what these discussions here today are all about.

When these rules were made public, the people of Montana immediately demanded relief, and I introduced H.R. 750 to repeal those sections of the Deficit Reduction Act establishing these rules. The IRS yielded to the pressure of Congress and the American people by rewriting the regulation. We still have a lemon and they can't make right out of a wrong. Now, we have a set of rules that still do not address the original problem yet remain a paperwork burden to those who legitimately deserve to deduct full expenses associated with the business use of their vehicles.

Under the new rules those who were abusing the tax laws by deducting 100 percent of their vehicle costs, when they should have been deducting maybe 20 or 30 percent, now have a "safe harbor;" they may deduct up to 80 percent without any kind of substantiation whatsoever. What about the poor person who should be able to legitimately write off 100 percent of his expenses? He is the one who gets caught with having to keep mountainous records and still has to keep a daily diary of his business use of his vehicles.

Under these revised rules employees are still taxed for vehicles provided to them by their employers as part of their wage/benefit package, and employees are required to use company vehicles for commuting are punished with higher taxes.

I am particularly concerned about our policemen, highway patrolmen, and other emergency personnel. These people are being penalized for a job which, sadly, is all too often unappreciated.

Mr. Chairman, I ask unanimous consent to submit the rest of my statement for the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.

[The prepared statement and attachments follow:]

STATEMENT OF HON. RON MARLENEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. Chairman, I want to thank you and the other members of the House Ways and Means Committee for holding this hearing on the so-called "log book" record-

keeping requirements that were added to the Internal Revenue Code in the Deficit Reduction Act of 1984.

We've got ourselves a lemon—the longer we repair it, the more it is going to cost us: the cost of credibility, the cost of resentment, the cost of enforcing compliance, and the cost of a taxpayer revolt.

I don't know whose devious mind came up with this incredible paperwork nightmare, but you can be sure that if they were on my staff, they would be looking for a new job. Compared to the suggestions of some of my constituents, receiving a dismissal slip would be quite merciful.

Since the beginning of the year, I have been contacted by hundreds and hundreds of Montanans demanding that Congress repeal these senseless, ridiculous regulations.

When the IRS wrote the rules to go along with this law, they followed their usual practice of writing regulations that would make the Gestapo proud: assume everybody is guilty and then force them to prove their innocence.

These regulations represent a massive invasion of privacy. The IRS has no right to know what you do, who you see, where you go and who you go there with!

In typical IRS fashion, they designed regulations whose abuse of the taxpayer is far more heinous than the abuse of the tax law.

You know, if these rules weren't such an abuse of power, they would be comical. If someone had told any of us here today that the IRS would require the people of this nation to keep a diary of every trip they made, every place they visited, and the reasons for those trips, we would have said they were crazy. Yet that is exactly what we are discussing today.

When these rules were made public, the people of Montana by the hundreds immediately demanded relief and I introduced H.R. 750 to repeal those sections of the Deficit Reduction Act establishing these rules.

The IRS yielded to the pressure from Congress and the American people by rewriting the regulations. Now we have a set of rules that still don't address the original problem, yet remain a paperwork burden to those who legitimately deserve to deduct full expenses associated with the business use of their vehicles!

Under the new rules, those who were abusing the tax laws by deducting 100 per cent of their vehicle costs when they should have been deducting maybe 20 to 30 per cent, now have a "safe harbor"; they may deduct up to 80 per cent without any kind of substantiation whatsoever.

And what about the poor person who should be able to legitimately write off 100 per cent of his expenses? He is the one who gets stuck with keeping mountains of records and still has to keep a daily diary of the business use of his vehicles.

Under these revised rules, employees are still taxed for vehicles provided to them by their employers as part of their wage/benefit packages, and employees required to use company vehicles for commuting are similarly punished with higher taxes.

I am especially concerned about our mail carriers, policemen, highway patrolmen, and other emergency personnel. These people are being penalized for doing a job which—sadly—is all to often unappreciated anyway. Now their government wants to take more from their paycheck for the privilege of taking their work home with them.

There have been a number of bills introduced to repeal the recordkeeping portions of the new law, but my bill also repeals the so-called "luxury vehicle" provisions, as well.

Farmers, ranchers and businesses that purchase vehicles priced above $16,000 are arbitrarily disallowed the normal, three-year accelerated cost recovery available to virtually everyone else. This is an unfair, totally arbitrary rule which says that every vehicle above $16,000 is "luxurious", while vehicles below that price aren't.

I'm not arguing that the taxpayers should indirectly pay for the purchases of Rolls Royces, Mercedes and other extremely expensive cars, I just think this is a ridiculous way to legislate. There must be a more reasonable approach to federal tax policy.

I don't think anyone questions the fact that the tax laws with respect to writing off certain business expenses have been abused. The question all of us should be asking is whether or not these rules appropriately address the problem. Clearly, the answer is an emphatic "No!".

Congress has passed legislation forcing everybody—farmers, ranchers, and businesspeople—to embark on a massive recordkeeping nightmare. This is equivalent to using a B–52 bomber to swat a fly, and I am proud to say that I voted against this legislation.

Mr. Chairman, this charade has gone on long enough. We've got a lemon, and we shouldn't try to fix it.

American farmers, ranchers, and businesspeople have suffered for too long. These rules don't address the problem; they are an attack on innocent, hard-working taxpayers; they are an invasion of privacy that only the IRS could invent. I urge this Committee to adopt my legislation, H.R. 750, to completely repeal these regulations.

Mr. Chairman, I have attached several letters from the people of Montana to my testimony, and I ask that they be included with my remarks.

MONTANA SESSION LAWS 1985—HOUSE JOINT RESOLUTION NO. 17

A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging repeal of the provisions of the 1984 Tax Reform Act and Internal Revenue Service regulations requiring mileage and use records for business vehicles.

Whereas, the 1984 Tax Reform Act and recent IRS regulations implementing the act require records to be kept for "each business use" of a vehicle, which must show date, mileage, destination, driver, and purpose; and

Whereas, a business failing to keep proper records is subject not only to loss of investment credit and deductions for depreciation, fuel, insurance, repairs, and other expenses, but also is subject to an automatic 5% negligence penalty; and

Whereas, because the law further requires that a person who employs a professional tax preparer must certify that he has kept the proper vehicle log for each vehicle for which credits or deductions are claimed, the person may also be subject to civil and criminal penalties for fraud and false swearing if the IRS later determines that such records were not kept, or were not kept properly; and

Whereas, in many situations it is technically necessary but practically impossible to ensure that employees maintain the proper records for vehicles they use; and

Whereas, most agricultural businesses have many vehicles used primarily for particular purposes, such as fuel transportation, livestock feeding, chemical application, etc., each of which would require separate logs if they are capable of being used for any other personal use; and

Whereas, for a farmer or rancher to record the date, mileage, destination, driver, and purpose for each trip to a field, each trip checking or feeding livestock, each trip along a fenceline, or each trip for machinery repairs is unduly burdensome and in many cases impossible; and

Whereas, many farmers and ranchers, being independent, may simply refuse to keep the records and will lose valuable credits and deductions merely for refusal to keep such records.

Now, therefore, be it resolved by the Senate and the House of Representatives of the State of Montana: That Congress and the IRS are urgently requested to repeal the provisions of the 1984 Tax Reform Act and the implementing IRS regulations requiring records for mileage and use for business vehicles.

Be it further resolved, that a copy of this resolution be sent by the Secretary of State to each member of Montana's Congressional delegation.

BELT, MT, *January 14, 1984.*

RON MARLENEE,
Washington, DC.

DEAR RON: As a Montana rancher, I urge you to do all in your power to repeal the I.R.S. regulation which require extensive bookkeeping in recording mileages on farm and ranch vehicles. This proposed Reg. is not only very impractical and expensive, both for us, and the Bureaucrats who enforce it, in many cases it would be practically unworkable:

According to the booklet we received, "A single entry in the log is required for each trip including local transportation." Just imagine how impractical this would be on a ranch: For example we use our Jeep to haul in baby calves, haul salt, fix fence, pull a manure spreader, etc. during the calving season. Just part of a probable day.

1

Date and destintation—purpose of trip	Odometer	
	Begin	End
February 10: Barn to heifer pen, picked up calf and return to barn	29930	29930.4
February 10: Barn to old cows, picked up two calves and returned to barn	29930.4	29930.9

Date and destintation—purpose of trip	Odometer	
	Begin	End
February 10: Barn to East Pasture to put out salt and mineral blocks	29930.9	29931.9
February 10: Barn to corral to fix broken plank	29931.9	29932.1
February 10: Barn to back road to fix broken wires and return to barn	29932.1	29934

All for 4 Miles!!!!
Sound a little ridiculous?? No, very ridiculous!!
Please help rid us of this unnecessary and burdensome regulation.
Thank You,

CONSTRUCTION CO.,
Great Falls, MT, January 21, 1985.

Re 1984 Tax Reform Act.

Representative RON MARLENEE,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN MARLENEE: We are writing this letter to express our concern on the Tax Reform Act of 1984 that created special rules for retaining the tax benefits of company vehicle ownership and collecting taxes on the personal use of company vehicles by employees.

We certainly understand there has been flagrant use of company vehicle use for personal business and pleasure in regard to a fair tax owed to the government for this personal use of vehicles. But we certainly feel there must be a better method of collecting this tax without the numerous record keeping requirements imposed on companies our size in the construction industry.

We have vehicles that are never used for personal use that we are now required to record mileage. We have vehicles taken home by employees to prevent theft or vandalism; we have vehicles used by employees on call who go to and from jobsites from their residences; we have vehicles used to transport employees to jobsites when required by the nature and location of the project. We feel that vehicle use as per the above examples should not be subject to the record keeping requirements.

We understand Congress has decided to take another look at this bill within the very near future. We certainly hope and recommend you request the imput of the Associated General Contractors of America, Associated Building Contractors of America and other regional contractors associations to a better approach to their record keeping requirements.

Very truly yours,

____ ____,
President.

____ ____,
Chief Executive Officer.

____ ____,
Senior Vice President.

JANUARY 21, 1985.

DEAR SIR: I am writing you to bring your attention to the recent change in the law that affects the reporting requirements of any person using a car or truck for the business they are engaged in. The "IRS" has put my accountant in an adversary position. The vehicle log books he tells me are required to claim any portion of the expenses I experience are absurd. The justification of each and every mile by documenting who I talk with, and where I stopped each time during the course of a days business is ridiculous. I seek justice in these additional forms of government harrassment by telling you how I feel. The log book will only serve the purpose of intimidation, by making the accountant sign that he personally saw such a record when he computes my taxes. It does not prevent "creative writing" done by those who would avoid legitimate taxation. I feel as though my government is putting forth a "Big Brother" approach to curb the abuses of a very small group, at the expense of everyone who drives a business vehicle. Does it make sense to require a

farmer to log every mile driven around his field while feeding his livestock? I dare say the requirement is childish and even ludicrous in its intent.

Please hear my plea for a change in this new requirement. I feel the small business operator will be unfairly treated by implementation of this new law. Not one person I have spoken with about this law can find any equity in its intent. Those of us who must comply, or be denied this important expense deduction to survive in business, are upset and outraged by this intrusion by our government.

Respectfully,

———— ————.

Chairman ROSTENKOWSKI. Thank you.

The Chair calls Congressman Tom Loeffler.

Welcome to the committee Tom.

STATEMENT OF HON. TOM LOEFFLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. LOEFFLER. Thank you, Mr. Chairman, and members of the committee.

Clearly, Congress struck a raw nerve in the imposition of the auto log book requirement. This is an example of how changing a few words in the Tax Code can spawn a regulatory nightmare. Public faith in this institution is eroded, respect for and compliance with the law is undermined, and businesses and individuals across the country have been forced to spend countless unproductive hours trying to understand, interpret, and comply with these new requirements.

I know, Mr. Chairman, this committee intends to focus on the effect of recent revisions by the IRS to its original temporary and proposed rules and on the remaining problems in light of these revisions. I intend to address some of these problems later in my testimony. However, I must strongly assert that we gain nothing by trying to make the best of a bad situation when we have the ability to resolve the matter quickly and satisfactorily by repealing the adequate contemporaneous record requirement and returning to prior law provisions.

Despite the recent modifications made by the IRS significant paperwork requirements remain whose costs are likely to exceed the relatively minuscule additional revenues of $150 million which the Joint Committee on Taxation estimates this provision will produce in 1985.

In testimony before the House Small Business Committee earlier this month, the National Federation of Independent Business made a conservative estimate that each firm subject to this rule would incur $1,000 in increased annual costs for both lost hours of productivity and accounting fees. At best, recognizing that the IRS was considering modifications, NFIB estimated that 3 million businesses would be subject to the new rules, resulting in $3 billion of wasted money.

The revised regulations create additional complexities and ambiguities as well as injecting the issue of discriminatory and inequitable application of the law for different groups of taxpayers. Moreover, the revised regulations raise troublesome issues regarding definitional ambiguities, safe-harbor thresholds, and administrative procedures which pose continuing difficulties for responsible taxpayer compliance. These ambiguities and uncertainties are most disturbing in view of the fact that taxpayers face automatic negli-

gence penalties for errors or insufficient records and a misinterpretation of the new rules could subject a first-time offender to a substantial criminal penalty.

Mr. Chairman and members of the committee, I would like to comment briefly on just a few of the problems in the revised regulations.

No. 1, a special rule providing alternatives to the contemporaneous record rule is provided for business vehicles which, in order to qualify, must be used by an employee during most of the normal business day to make several stops in connection with the employers business. This language is sufficiently vague to present serious problems of interpretation.

No. 2, various safe harbor provisions are provided to those group of taxpayers who may conveniently fit within a broad category amenable to such classification. Nevertheless, this approach excludes other individuals with equally compelling situations and raises the issues of discrimination and equity.

No. 3, even within the safe harbor designations, legitimate problems exist. For example, in the case of salespersons, the Chamber of Commerce has estimated that actual business use may be closer to 90 percent than the 70 percent safe harbor provided in the regulations. The salesperson would be required either to pay taxes on the remaining 30 percent attributed to personal use, or to keep records of personal use. Thus, with paperwork requirements lifted only at the expense of legitimate deductions, it is likely that a significant additional paperwork regime will still result. In addition, other taxpayers, including farmers and ranchers, who might otherwise be eligible for a safe harbor provision, but who use their vehicles for business in excess of the 70 or 80 percent safe harbor, will still be required to keep records to claim additional deductions.

There are additional problems with respect to the safe harbor provisions aimed at farmers and ranchers. There is no provision addressing the case of the farmer or rancher who meets the eligibility requirement of at least 70 percent of gross income from farming and ranching at the beginning of the year, but who, through unforeseen circumstances, may not meet that test at year's end. If the taxpayer in this situation had not kept the contemporaneous records he would be faced with the loss of legitimate deductions. This situation could arise if the taxpayer encountered economic difficulties during the year which forced him to seek outside employment or, in certain other instances, if the spouse of the farmer or rancher have income from an outside job.

Mr. Chairman and members of the committee, obviously you cannot make a silk purse from a sow's ear.

Mr. Chairman, I ask unanimous consent that my entire statement be placed in the record.

Chairman ROSTENKOWSKI. Without objection, your entire statement will be placed in the record.

[The prepared statement follows:]

STATEMENT OF HON. TOM LOEFFLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, Members of the Committee, I appreciate the opportunity you have afforded me and the other witnesses to comment on the contemporaneous record-

keeping requirement contained in the 1984 Tax Reform Act relating to substantiation of business deductions for certain property, including most motor vehicles.

The so-called "auto logbook requirement" and the subsequent Internal Revenue Service regulations have elicited an overwhelming groundswell of public outrage and protest. Clearly, Congress has struck a raw nerve in the American taxpayer.

There has been a growing recognition by Members of Congresss that an obscure provision in last year's tax bill, which received little attention and no public hearing or debate, has fueled a massive taxpayer revolt. This is an example of how changing a few words in the tax code can spawn a regulatory nightmare. Public faith in this institution is eroded, respect for an compliance with the law is undermined, and businesses and individuals across the country have been forced to spend countless unproductive hours trying to understand, interpret and comply with these new requirements.

I know that this Committee intends to focus on the effect of recent revisions by the I.R.S. to its original temporary and proposed rules, and on remaining problems in light of these revisions. I intend to address some of these problems later in my testimony. However, I must strongly assert that we gain nothing by trying to make the best of a bad situation when we have the ability to resolve the matter quickly and satisfactorily by repealing the "adequate contemporaneous record" requirement and returning to prior law provisions. It is my understanding that it may have been a common assumption at the time of consideration of the conference agreement that his provision merely clarified or codified current law or practice at that time. However, if there were legitimate questions as to the extent of I.R.S. authority under prior law, the Congress has only exacerbated the situation by inserting the "contemporaneous" requirement without further significant explication. Upon receiving this additional authority which the I.R.S. evidently sought in order to strengthen its enforcement capabilities, the I.R.S. promulgated regulations which go well beyond the bounds of public utility or common sense.

While the Treasury may have expressed concerns, at the time this legislation was considered, regarding nomcompliance with the law by taxpayers who may have exaggerated claims for deductions and credits, their response to the addition of "contemporaneous" to the statutory language has been regulatory overkill.

Furthermore, the I.R.S. had the authority under prior law to require adequate substantiation to uphold claims for business deductions. This standard could include "contemporaneous" records in the case of meals, for example, where such treatment is consistent with normal practice. However, for other uses, taxpayers were allowed to "reasonably reconstruct" their expenses. Nevertheless, the I.R.S. under prior law did have the authority to demand adequate records. If we repeal the "contemporaneous" requirement, they will still have that authority. I strongly suggest that any benefits expected to accrue from the application of these new requirements to a broad cross-section of honest American taxpayers who have not intent to defraud the government will be overwhelmed by the negative repercussions, both in terms of time and money wasted in non-productive activity, and in the heightened perception of the federal government as intrusive, inequitable and unreasonable.

Despite recent modifications made by the I.R.S., significant paperwork requirements remain whose costs are likely to greatly exceed the relatively miniscule additional revenues of $150 million which the Joint Committee on Taxation estimates this provision will produce.

In testimony before the House Small Business Committee earlier this month, the National Federation of Independent Business made a "conservative estimate" that each firm subject to this rule would incur $1,000 in increased annual costs for both lost hours of productivity and accounting fees. At best, recognizing that the I.R.S. was considering modifications, NFIB estimated that three million businesses would be subject to the new rules, resulting in three billion dollars of wasted money.

The revised regulations create additional complexities and ambiguities as well as injecting the issue of discriminatory and inequitble application of the law for different groups of taxpayers. Moreover, the revised regulations raise troublesome issues regarding definitional ambiguities, safe harbor thresholds and administrative procedures which pose continuing difficulties for reasonsible taxpayer compliance. These ambiguities and uncertainties are most distrubing in view of the fact that taxpayers face automatic negligence penalties for errors or insufficient records and a misinterpretation of the new rules could subject a first time offender to a substantial criminal penalty.

I'd like to comment briefly on just a few of the problems in the revised regulations:

(1) A special rule, providing alternatives to the contemporaneous record rule, is provided for business vehicles which, in order to qualify, must be used by an em-

ployee during "most of a normal business day to make several stops in connection with the employer's business." This language is sufficiently vague to present serious problems of interpretation.

(2) Various "safe harbor" provisions are provided to those groups of taxpayers who may conveniently fit within a broad category amenable to such classification. Nevertheless, this approach excludes other individuals with equally compelling situations and raises the issues of discrimination and equity.

(3) Even within the safe harbor designations, legitimate problems exist. For example, in the case of salespersons, the Chamber of Commerce has estimated that actual business use may be closer to 90% than the 70% safe harbor provided in the regulations. The salesperson would be required either to pay taxes on the remaining 30% attributed to personal use, or to keep records of personal use. Thus with paperwork requirements lifted only at the expense of legitimate deductions, it is likely that a significant additional paperwork regime will still result. In addition, other taxpayers, including farmers and ranchers, who might otherwise be eligible for a safe harbor provision, but use their vehicles for business in excess of the 70% or 80% safe harbor, will still be required to keep records to claim additional deductions.

There are additional problems with respect to the safe harbor provisions aimed at farmers and ranchers. There is no provision addressing the case of the farmer or rancher who meets the eligibility requirement of at least 70% of gross income from farming or ranching at the beginning of the year, but, through unforeseen circumstances, may not meet that test at year's end. If the taxpayer in this situation had not kept the contemporaneous records he would be faced with the loss of legitimate deductions. This situation could arise if the taxpayer encountered economic difficulties during the year which forced him to seek outside employment. In this case his economic difficulties would simply be compounded by the penalties of lost legitimate business deductions.

There are other problems. For example, in my state of Texas, in the ranching industry, the average cow herd has less than 50 cows and many cattlemen in this herd-size category could not qualify for the 70% definition of gross income from farming. Therefore, they would not be eligible for this special rule—this discriminates against the small cattle operator. A problem that cuts across all these cases is one in which a spouse may contribute more than 30% of the income in a joint return based on non-farm or ranch employment.

(4) Procedures for some anticipated situations are left pending or not addressed. For example, if an employer elected a 70% or 80% safe harbor exclusion and imputed the remaining percentage as income to the employee as required, there is no provision for the case of an employee who then keeps records of personal use which totals less than 20% or 30% and indicates higher business use. In the interim, the employer would have been including income for tax purposes to that employee which would have been overestimated and the employee would have been overtaxed. There are no procedures for either the employee to be reimbursed by the federal government or for the employer to claim additional business deductions. Comments have been requested by the I.R.S. as to whether both employers and employees should be required to elect the same method at the beginning of the year. But this simply injects new complexities and questions, as I have outlined above.

I think it is safe to say that the regulations are rife with these kinds of problems and unresolved issues and I do not think that they can be satisfactorily addressed through more regulation.

I also have considerable concerns in a related area involving the taxation of certain so-called fringe benefits affecting public safety and law enforcement officials. It defies logic an good public policy to impute income to police officers and sheriff deputies who are required to take vehicles home, and in essence be "on call." If officers are forced to travel to a "place of business" to pick up a vehicle before responding to a distress call, the public's safety and the efficiency of our protection agencies will be severely impaired. This is particularly critical in rural areas wehre long and often remote distances are involved. By no stretch of the imagination can this kind of activity be termed a "fringe benefit." There should be an exemption for use of emergency vehicles and I applaud another Member of your Committee, my colleague Beryl Anthony for introducing legislation, of which I am a cosponsor, which addresses this issue. I am hopeful that the Committee will remedy this problem as well as the record-keeping matter.

Quite frankly, I am astounded that the I.R.S. regulations implementing the contemporaneous record rule did not raise alarm bells in the Office of Management and Budget which is the official watchdog of the Paperwork Reduction Act and of regulatory impact analyses under Executive Order 12291. We have promised the American taxpayer fewer paperwork requirements which are burdensome, duplicative or

uncost effective, and this year we are heralding tax simplification, yet at the same time we are proposing a new paperwork load which is in egregious violation of both the letter and the spirit of these initiatives.

I think our colleague Frank Horton summarized the situation well in his comments accompanying the Final Report of the Paperwork Commission in 1977 and I believe his words are even more compelling today.

"The theme we heard repeatedly throughout the country is that the vast majority of Americans want to obey the law. Most Americans want to cooperate and participate in furthering Federal programs and national goals. However, these people are frustrated by a government which, in their view, does not trust them."

"Many people feel, and the Commission agrees, that a multi-billion dollar wall of paperwork has been erected between the government and the people. Countless reporting and recordkeeping requirements and other heavy-handed investigation and monitoring schemes have been instituted based on what we view as a faulty premise that people will not obey laws and rules unless they are checked, monitored and rechecked."

I believe the situation we are in can be summed up by the old adage "You can't make a silk purse from a sow's ear." The I.R.S. is not going to produce good regulations based on this statutory requirement. Problems will continue to haunt us unless we simply bow to common sense and good public policy and repeal this provision.

It would be laughable were it not so tragic that we must expend all this effort and subject our constituents to all this confusion and expense on a matter which barely rates the attention of a footnote. We have thrown honest, hard-working taxpayers into a turmoil by this heavy-handed approach in an exercise which simply isn't worth effort. Unfortunately, the most likely fall-out from this episode will be that more Americans will simply thumb their nose at the government.

I think it is in the best interests of this Committee, of the Congress and the integrity of the tax system, for the Committee to act expeditiously to repeal this provision and return us to the relative sanity of prior law. Mr. Chairman, this dog won't hunt.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions of Congressman Loeffler? If not, we thank you.

The Chair calls Congressman Pashayan. Welcome, Congressman, to the committee.

STATEMENT OF HON. CHARLES PASHAYAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. PASHAYAN. Thank you, Mr. Chairman. This is the first time I have appeared before your committee.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. PASHAYAN. The people in my district are pretty conservative. They work hard, they pay their taxes, and I think if they were here, they would simply say there is a very famous saying in Washington—if it works, do not fix it. Mr. Chairman, this is not going to work so let us fix it.

[The prepared statement follows:]

STATEMENT OF HON. CHARLES PASHAYAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased to have this opportunity to testify before the committee regarding the Internal Revenue Service's proposed regulations on contemporaneous recordkeeping for the business use of depreciable property, and to speak in favor of H.R. 600, which would repeal the legislation mandating these regulations. The legislation, part of the Deficit Reduction Act passed last year, would put unreasonable burdens on two major economic groups in my district: agriculture and small business.

Most of the farms in my district have a number of vehicles used daily in routine operations by various workers. To require that a log be filled out every time the key

is turned on this equipment is impractical. One farmer told me "the government is forcing me to cheat on these records" because keeping them contemporaneously is impossible. Many of these vehicles cannot or would not be used for any personal business at all.

The small businessmen in my district complain that this recordkeeping is equally unworkable. Salesmen who travel from client to client will end up spending half their time filling out logs and maintaining this vast paperwork for the government. Though it may appear to be just a small requirement asked of the individual, it is important to remember that it is one additional requirement to a myriad of small and large regulations that are imposed already by the Federal government on the most productive elements of our country.

When President Reagan came into office he promised to get government off the back of the people. The recordkeeping is an example of the bureaucracy acting at the direction of Congress, crawling back onto agriculture and small business. The measure stands contrary to the spirit of the Paperwork Reduction Act, which has eased the government's intrusion into the operation of the marketplace.

I certainly recognize the Treasury Department's interest in having accurate records regarding the depreciation of business property. These regulations encourage the owner of the vehilce either not to bother to depreciate the property or to falsify the records if they are not absolutely correct. Since the Internal Revenue Service could not possibly examine each set of records, it appears that this is an attempt to discourage taxpayers from depreciating their property. In either case the property owner shall suffer, and the government will not collect enough additional tax revenue to justify the burden, not to mention the cost of printing the forms and conducting a minimum of auditing.

Mr. Chairman it is time for the Congress not only to repeal this law, but to examine the rest of the U.S. Code with greater scrutiny to reduce the burdens that it places on small business and agriculture. Inherent in this approach is to examine proposed legislation to eliminate such onerous provisions before they are imposed.

Thank you.

Chairman ROSTENKOWSKI. Thank you very much.

The Chair calls Congressman Toby Roth.

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. ROTH. Thank you, Mr. Chairman, and members of this august committee. Most of the arguments that I was going to make have already been made numerous times, so I would ask unanimous consent, Mr. Chairman, that my full statement be placed in the record.

Chairman ROSTENKOWSKI. Your entire statement will be included in the record.

Mr. ROTH. I receive from my constituents over 200 letters a day on the IRS recordkeeping requirement.

I have learned, because of the new rule, the average businessman spends between 20 minutes and 2 hours to fill out these forms and it saps productivity. These costs are ultimately passed on to the consumer, so I ask this committee to use its usual good judgment and correct obvious oversight that was made in the past.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF HON. TOBY ROTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. Chairman, I appreciate the opportunity to be able to testify before you today. On January 21, I introduced H.R. 541, a bill to repeal Section 179(b) of the Tax Reform Act of 1984, which forces taxpayers to keep "adequate contemporaneous records" in order to take ordinary business deductions.

I am delighted that you have acted promptly to bring out into the open all the problems caused by the IRS proposed regulations which require that detailed vehi-

cle logs be kept in order for a farmer or a business person to benefit from the lawful deduction of the expenses incurred by the business use of a car or truck.

These regulations stem from a new paperwork requirement that was imposed by the Tax Reform Act of 1984. Section 179(b) of that Act is an attempt to restrict tax avoidance that is based upon the deduction of vehicle expenses, when such expenses are not truly related to business use.

On October 24 of last year, the Internal Revenue Service proposed regulations to enforce this record-keeping requirement. Those regulations rquired the taxpayer to keep contemporaneous and excessively detailed vehicle logs in order to receive formerly routine deductions.

In the past several weeks I have interviewed or heard from a large number of small businesspeople, farmers and sales representatives who have attempted to comply with these new rules. They tell me from firsthand experience how costly these rules are.

From 200 letters per day from my constituents, I have learned that because of these new rules the average businessman may spend from 20 minutes to 2 hours per day filling out new forms. They sap his productivity and result in additional costs which ultimately are passed on to the consumer.

At a hearing on this problem held earlier this year by the Small Business Committee, witnesses testified that about thirty million vehicles and drivers were affected by the October 24th regulations. Business people nationwide will spend at least 7 billion dollars worth of their valuable time with the net return to the federal government of an estimated 140 million dollars, a 50 to 1 ratio.

In reaction to this outpouring of protest, on February 20th, the IRS published modified proposed regulations that carve out several exemptions to these record-keeping requirements.

According to the new IRS proposal, farm vehicle users may now elect to keep no records and treat 80 percent of the vehicle use as business and 20 percent as personal use provided that 70 percent of the farmer's gross income is from farming.

Businesses keeping vehicles on the premises during non-business hours and commuters using vehicles only for commuting purposes are also exempt from these record keeping requirements.

Finally, sales and servicepeople may elect not to keep records and treat 70 percent of their vehicle use as business and 30 percent as personal use.

These new regulations merely carve out narrow exceptions to the rule and do little to solve the real problem. Even the exemptions created appear to be artificial and without any substantial merit. The exemptions are narrowly drawn and are unavailable for most taxpayers.

These exemptions simply add further complications and questions and do little to relieve the overall problems created by the confusing and complicated recordkeeping requirements. Entire sectors of affected taxpayers still remain burdened by regulations that make little sense in terms of every day business realities or the amount of revenue the government might gain from the new regulations.

Rather than go back and clarify our intent so there is no chance the IRS will misunderstand it, a task which is probably impossible, we would be better off restoring the previous law. This previous standard applied across the board, treating taxpayers equally.

I have heard repeatedly from my constituents that businesspeople and farmers do not mind paying their fair share of taxes. But they do strongly object to unjustifiable Federal requirements for thousands of pages of unneeded paperwork.

That is why I have introduced legislation which would repeal that provision of the law. I am sure it is why so many of my colleagues are here to testify today.

A repeal of this law would not relieve taxpayers of reasonable record-keeping responsibilities. Taxpayers would still be required to maintain "adequate" records or "sufficient corroborating evidence" to document claimed deductions, just as they did before.

In an attempt to reduce the deficit, Congress has sought various ways to enforce stricter compliance with tax laws. The law however, can go too far. The requirement for compliance can become too burdensome and, eventually, couterproductive. The IRS has taken this Congressional mandate and through its regulation has created an unfair burden.

I do not want to perpetuate a tax loophole or promote tax evasion. I simply believe that Congress must protect taxpayers from an unreasonable requirement to keep excruciatingly detailed logs of mileage, times, dates, and purpose of travel.

It is unfair to burden with unnecessary paperwork businesspeople and farmers and other taxpayers who routinely use vehicles for business purposes. It is unfair to turn productive businesspeople into unproductive bookkeepers for the IRS. It is

unfair for them to spend even more time coping with government red tape. Companies that faithfully follow these regulations have no time to do anything else. This country cannot afford these types of senseless regulations.

Mr. Chairman, I urge this committee to act expeditiously on this issue to end the confusion that exists among people trying to comply with these regulations.

Chairman ROSTENKOWSKI. Thank you.

Are there any questions? If not, we thank you

The Chair calls Congressman Stenholm. Welcome to the committee. You may proceed with your statement.

STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STENHOLM. I ask to have my entire statement in the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.

Mr. STENHOLM. I thank you for holding these hearings. I think everything has been said that needs to be said,

I would recall a comment of Justice Oliver Wendell Holmes who was widely quoted: "Taxes are what we pay for a civilized society." I certainly agree with that.

He also said, "The power to tax is not the power to destroy."

Recently, I held a townhall meeting in Abilene, TX, and I was quite frankly shocked at the hostility that many of my constituents felt not only about this contemporaneous recordkeeping requirement but also the overhostility toward our tax system, and I commend you for the leadership that you are taking now today and in the weeks ahead in dealing with this question. I think it goes far beyond the contemporaneous requirement in recordkeeping, and I commend you for your leadership in that area.

I like would make one point for the committee: In the event you choose not to repeal this requirement, which I imagine you will seriously consider doing today, if you do not repeal it, I would ask you to look at one particular area, and that is agriculture, and it is appropriate for in other areas.

For example, the IRS regulation would relieve a farmer of the need to keep vehicle logs if 70 percent of his or her gross income came from farming. This is similar to the provision in effect for sometime concerning farmers' estimated taxes. If a farmer unfortunately has relied on that safe harbor all year long, may be unpleasantly surprised at the end of the year by a poor harvest, a bad market or an unexpected December surge in nonfarm income, the result is a penalty for not paying an estimated tax. I can foresee the same thing happening in regard to the amended vehicle log requirements. After the tax year is over, a farmer may find out that unexpectedly his or her nonfarm income exceeded 30 percent of total income. As a result, that farmer could not take a 60- or 80-percent reduction for the perfectly legitimate farm use and would not have any contemporaneous law.

There is just one point I would seriously urge this committee to look at in the event you choose not to go for repeal but try to make a bad law work better for the obvious purpose we all agree, and I want to make clear my strong sympathy for enforcing our tax laws as efficiently and effectively as possible. I strongly agree that an item claimed as a business deduction should be, in fact, a business

expense and should not reflect the use of business property for personal purposes.

There is no doubt that retaining the contemporaneous record requirements would do that. The question is at what cost, and I think that is the situation that has prompted you to hold this hearing, and I thank you very much for this opportunity to testify.

[The prepared statement follows:]

STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to appear before you today and share with you my thoughts on the requirement that taxpayers keep "adequate contemporaneous records" of the use of "listed" property, such as automobiles.

Justice Oliver Wendell Holmes has been widely quoted as saying, "Taxes are what we pay for a civilized society." Justice Holmes also wrote, "The Power to tax is not the power to destroy." The reason these hearings were called today is that, across our great country, millions of taxpayers believe that Congress and the Administration have forgotten that second prescription by Justice Holmes. "Destructive" is precisely the way they see these recordkeeping requirements: destructive to small businesses, to farmers, and to their trust and confidence in their government.

Some of our colleagues have suggested that this issue has ignited a reaction among average taxpayers like nothing we have seen since Congress was deluged with protests over the now-repealed ten percent withholding of taxes from interest and dividends two years ago. I think that is a reasonable comparison, although I would like to add a qualification: While the complaints I have received about the vehicle log requirements may be fewer in number, so far, those complaining have more than made up for it in intensity.

The late Jack Benny was reputed to have said, "Timing is everything." I found out how true this was, recently. Some time ago, I had invited several employees of the Internal Revenue Service to take part in a town hall meeting in the 17th District of Texas to help answer taxpayers' questions. Little did I anticipate that the town hall meeting would be held during the height of taxpayer outrage over the new vehicle log requirements. I was not prepared for the anger and hostility toward the IRS and our tax system, in general, that I encountered at that town hall meeting and elsewhere across the 17th District. People are not simply disagreeing with a new tax code provision and some new regulations designed to recapture some lost revenue. There is a lot of anger out there, on a number of different levels. I am sorry to see it but I understand it.

The contemporaneous recordkeeping requirement, which appeared in Section 179 of the Deficit Reduction Act of 1984, was well-intentioned, as was much of the rest of that Act. This provision, according to the Joint Committee on Taxation, sought to recapture approximately $150 million of tax revenues lost each year through insufficient or evasive reporting. All of us in Congress shudder at the thought of the $90 billion a year that some have estimated unlawfully escape the tax collector. And we all agree that there are many questionable loopholes that can be closed and that there is much justification for additional, reasonable methods of enforcing our tax laws. But somewhere between intention and execution, something has gone wrong.

I think there is widespread acknowledgement that tax revenues were being lost because of the personal use of business vehicles. Some taxpayers knew what they were doing and some were only making honest errors of omission. For example, I heard from one constituent who complained that the new vehicle log requirement meant that he could no longer take a business deduction for commuting between his home and ranch. I had to explain to him that the IRS and the courts had always disallowed such a deduction and that only the reporting requirement had changed. While there was a problem here, however, I believe that Congress and the Administration used a shotgun to take out a target that was more appropriate to a rifle.

I had looked forward with hope, therefore, to the revised regulations the IRS had promised to issue after the groundswell of opposition to the initial regulations published last October 24. I must admit there are some improvements in the February 20, 1985, IRS regulations concerning contemporaneous recordkeeping. Given the constraints of the statutory language of the Deficit Reduction Act of 1984 and the supporting language of its Conference Report, however, I seriously question whether the IRS can rewrite its regulations completely enough to narrow down their gauge from their earlier shotgun approach to a more reasonable, practical approach.

As I mentioned, there are some improvements. A number of my constituents suggested to me that it would be reasonable to presume, in many cases, that a given piece of property is used for business purposes only 70, 80, or 90 percent of the time, and that deductibility could be computed accordingly. There also were suggestions that when business property clearly was not used for personal purposes and an employer had a policy against such use in effect, that no logs should be necessary. Forms of these proposals did work their way into the new IRS regulations.

Many problems remain, however. For example, the revised IRS regulations would relieve a farmer of the need to keep vehicle logs if 70 percent of this or her gross income came from farming. This is similar to the provision that has been in effect for some time concerning farmers' estimated taxes.

If a farmer derives more than two-thirds of his or her gross income from farming, then it is not necessary for that farmer to pay an estimated tax during the tax year. Unfortunately, a farmer who has relied on that safe harbor all year long may be unpleasantly surprised at the end of the year by a poor harvest, a bad market, or an unexpected December surge in non-farm income. The result is a penalty for not paying an estimated tax the farmer never thought, in all good faith, that he or she was required to pay.

I can forsee the same thing happening with the amended vehicle log requirements. After the tax year is over, a farmer may find out that, unexpectedly, his or her non-farm income exceeded 30 percent of total income. As a result, that farmer could not take a 70 or 80 percent deduction for the perfectly legitimate business use of farm vehicles and would not have any detailed contemporaneous logs upon which to rely, either.

There may be ways to fine tune a solution to this problem, such as having the IRS examine previous years' incomes. In this area, as in others, however, I suspect that too much fine tuning will simply add to the possibilities for inequity.

Similarly, some in the construction industry have reasonably suggested that some vehicle use that is for the convenience of the employer simply should not be considered personal use. The example that comes to mind immediately is that of construction job site vehicles that an employer requires its employees to take home overnight to prevent theft or vandalism. This is as much a business expense as constructing a fence around the vehicles and posting a guard. Similar cases arise when employees are "on call" and must, therefore, report to a job site directly from home.

In the best of all possible worlds, I would prefer having the IRS perfect its regulation and having Congress leave the current statutory language as it is. I am appearing here today, however, to urge this Committee to proceed with legislation repealing this provision of the Deficit Reduction Act of 1984. This is not the best of all possible worlds and, for a number of reasons, outright repeal is the least troublesome and most beneficial of all possible solutions.

The IRS first published contemporaneous recordkeeping regulations last October 24. These were followed by regulations concerning fringe benefits on January 7, with which there was some necessary overlap. On January 25, 1985, the IRS issued a release announcing that it would soon be amending its October 24 regulations. These amendments were published on February 20. In the short space of less than two months during the taxable year of 1985, taxpayers have already been given two sets of recordkeeping rules and a clarification, on the side, about fringe benefits. My office has received numerous complaints that taxpayers and their accountants did not completely understand what property was covered by the original regulations. How far are we going to take the taxpayers into this tax year without letting them know, with some certainty, what they need to do to comply with the law?

If we repeal the current log requirements, there still would be an enforceable standard of deduction substantiation on the books, since most of the repeal legislation now before the Committee, including legislation I have co-sponsored, would simply re-implement the previous standard that deductions be supported by "adequate records or by sufficient evidence corroborating (the taxpayer's) own statement."

I want to make clear my strong sympathy for enforcing our tax laws as efficiently and effectively as possible. I strongly agree that an item claimed as a business deduction should be, in fact, a business expense and should not reflect the use of business property for personal purposes.

There is no doubt that retaining the contemporaneous recordkeeping requirement in statute and regulation would catch many current violators of the law, and would educate many who, innocently and unknowingly, would have become violators.

But at what cost?

As you know, some groups estimate that compliance with the current log requirements would cost the private sector up to $7 billion a year. Everyone seems to agree

that small businesses, farmers, and many others are swamped with government paperwork. We all seem to agree that reductions in paperwork and record-keeping should be the order of the day. How can we ignore the fact, then, that the majority of paperwork imposed by the government upon the private sector is generated by our tax code? Can we, in good conscience, add another substantial burden in this area?

Moreover, it is well known that if you treat an honest man like a liar and a thief, you can make him into one. The government of a free people must, beyond a certain point, trust the people. Otherwise, the result will be twofold: The people will cease to trust the government and they will have increasing incentives to evade the laws of that government.

Now that this issue has been brought out into the bright light of day, there is ample time for this Committee to consider and perfect a new standard for taxpayer compliance, other than contemporaneous recordkeeping. In the meantime, however, a great burden of paperwork and uncertainty should be lifted from the shoulders of the small businessperson, the farmer, and the employee, by repealing the contemporaneous recordkeeping requirements.

Chairman ROSTENKOWSKI. Thank you very much.

Are there any questions of Congressman Stenholm? If not, we thank you.

The Chair calls Senator Heinz.

Welcome to the committee, John. It is nice to have you join us and give us the benefit of your views. We look forward to your testimony.

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator HEINZ. It is a privilege to appear before the Ways and Means Committee and to see so much interest in this subject.

Indeed, it is my view that the grassroots movement to repeal the contemporaneous recordkeeping requirement has become literally overwhelming, as I will reflect upon in a moment. It is the one issue I hear people complaining about when I hold a town meeting in my home State of Pennsylvania. I have received over 2,000 letters on this issue. This stack of letters is not the 2,000 letters, but rather it is the mail I have received in the last 5 days, some 600 letters. The mail, at least in my Senate office, is running ahead of and threatens to surpass the mail we received on the Panama Canal Treaty. If we don't act in both the House and Senate to redress the issue of contemporaneous recordkeeping issue, I feel the paperwork burden placed on the American people will soon be shifted to our offices, thanks to all this mail.

Mr. Chairman, the Senate counterpart to the bill H.R. 531 is S. 260 which Senator Pryor and I introduced. The purpose of S. 260 is to repeal the contemporaneous recordkeeping provisions and return to prior law. When we first introduced the bill we had 25 cosponsors. As of today, even after issuance of the new IRS regulations, we have 50 cosponsors.

While the new IRS safe harbor rules offer relief for some, there are tens of thousands of small businesses that would suffer from this unjust paperwork burden.

Let me be frank to say the fault of these regulations is not the Internal Revenue Service. It is required to uphold the laws we pass, and the law we passed last year clearly requires contemporaneous records to be maintained. Unless we repeal it, no matter how

the IRS works, bad law untimately produces bad regulations and this is clearly a bad law.

The IRS estimates that in 1979 approximately 11.3 million individuals claimed a tax deduction for automobiles. That number does not take into account corporations. There are no recent figures available to determine how many people are affected. What is clear is that this provision adversely affects all segments of the business and agricultural communities in a heavyhanded and needless way.

Rather than reading all 600 of these letters, Mr. Chairman, I would like to give you examples of how this is affecting a few different kinds of constituents in my home State of Pennsylvania and what they think about the provision. I will quote very briefly from a few letters. These are their words, not mine.

Mr. R.J. Hutton, a small businessman wrote from West Grove—that is in Dick Schulze's Chester County—he writes in part:

> In my own case, my automobile is used 100 percent for business with one minor exception. My home is three-tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. If I document each of those trips and all other miscellaneous business that I have within 5 miles of my office, it will approach a telephone directory size log by year's end. No auditor or IRS agent is ever going to review it.

Mr. Chairman, we recently had a little problem in the Philadelphia regional office because of the fact that the IRS started to attach the bank accounts of literally up to 10,000 Pennsylvanians, New Jersey, and Delaware businesses because of a computer error back in October. I think the committee is aware of this problem. It took the IRS until February to really begin to straighten out the problem. In the mean time, a lot of businesses literally were told by their banks the IRS has come to us and told us to stop issuing credit, stop making payments on checks, to notify your creditors that you are a deadbeat, and so forth. Here we are in the position of multiplying 10, 20, 50, 100-fold records for the Internal Revenue Service to allegedly look at when they can't keep their own records straight. Isn't that the height of folly. When all is said and done, isn't that the best reason to act quickly and fix this law.

Mr. Chairman, I ask that my full testimony appear in the record.

Chairman ROSTENKOWSKI. Without objection, it is so ordered.

Senator HEINZ. I would add I will be submitting comments from Joan Insley, a realtor in Allison Park; Peter Stahl, a pharmacist from Northampton, PA; from David Walsh, a vice president of a water supply company in Harrisburg; from Robert Purse, a florist from Pittsburgh, my hometown; and Edward Vogel, a businessman from Mars, PA, and, finally, comments from Thomas Welling, a contact lens service person in Port Matlida.

I will supply these letters for the record. I encourage all members of the committee to take a look at these examples, but I suspect that you have more than your own fair share in your own mailboxes already.

Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

I commend you and this committee for holding this hearing today, and am pleased to have the opportunity to testify before you and describe the importance of repealing the new automobile recordkeeping requirements.

The grass roots movement to repeal the "contemporaneous" recordkeeping provision has become overwhelming. It is the one issue that I hear people complaining about everytime I hold a town meeting. To date, I have received approximately 2,000 letters from my constituents demanding repeal of the provision—last week I reeived another 403 letters—so you can see that the demand for repeal is not slowing down. In fact, when Senator Pryor and I introduced S. 260 to repeal the contemporaneous recordkeeping provision and return to prior law, we had 25 cosponsors. Today, even after the IRS issuance of new regulations, we have 50 cosponsors.

The new IRS regulations offer relief for a few—mostly the farmers and the sales or service people who are constantly in their cars. While the new IRS safe harbor rules offer relief to some, there are tens of thousands of small businesses who would be left to suffer from this unjust paperwork burden.

The fault does not lie with IRS; it is required to uphold and enforce the laws which this Congress passes, and the law clearly requires "contemporaneous" records to be maintained. Bad law definitely produces bad regulations, and this is clearly a bad law.

The IRS estimates that in 1979 approximately 11.3 million individuals claimed a tax deduction for automobiles. This number does not even take into account corporations, so there are no recent figures available to determine how many people are affected. What is clear is that this provision adversely affects all segments of the business and agriculture communities in a heavyhanded and needless way.

Let me give you examples of how this is affecting the people in Pennsylvania, and of what they think about the provision. These are quotes from their letters, not my words.

R.J. Hutton: a small businessman wrote from Westgrove, Pa. "I do not understand the need for such recordkeeping and how it could possibly enhance the tax revenue; at least, to the extent of overcoming the headaches, time and effort spent by me and others in our organization for such detailed recordkeeping. In my own case my automobile is used 100% for business with one minor exception. My home is three tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. If I document each of those trips and all the other miscellaneous business that I have within five miles of my office, I will approach a telephone directory size log by year's end. No auditor or IRS Agent is ever going to review it. Such a law is not a good law. Please, on behalf of American business efficiency and productivity change and rid the country of this oppressive, needless law."

Joan Insley, realtor in Allison Park, Pa wrote: "The rules promulgated by the Government regarding the use of cars in business has reached a new high in stupidity and I certainly hope that you will have enough sense to act on repealing the law."

Peter Stahl, a pharmacist from Northampton, Pa wrote: "My personal use of the company car consists of driving home at night and back to work in the morning. Business use of the car consists of deliveries to customers (sometimes 10 to more a day), piking up merchandise at a wholesaler manufacturer or another store, and going to trade shows and seminars. Trying to keep a detailed log (with various drivers) is really a full time job."

David Walsh, a vice president of a Water Supply Co. in Harisburg, Pa wrote: The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end.

Robert Purse, florist from Pittsburgh, Pa wrote: The regulations proposed by the IRS impose an impossible recordkeeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We believe the IRS regulations could significantly increase our cost of doing business and even our ability to stay in business.

Edward Vogel, a businessman from Mars, PA listed ways that the new requirements were affecting his business. I believe that you will find the points well taken:

User instruction time/user log time—the times needed to instruct users on the correct completion of the log sheet and the time needed to log mileage, destination, etc.

Enforcement time by the employer—the time to reprimand those users who do not comply with the completion regulations.

Interference with daily business activities—takes away from sales time, service time, etc.

Additional bookkeeping—extra workload for an already busy person.

Collection and verification of log sheets—who should do it? This requirement takes a person away from their regular duties.

Additional cost for storage and maintenance of these records (file cabinets, etc.).

Additional expenses for supplies needed by each user (log sheets, clipboards, etc.).

And finally comments from Thomas Welling, a contact lens service person in Port Matlida, PA: "For years, I have recorded the beginning and ending mileage of my daily business trips, no matter if I used my car, or in rare emergencies, my truck. I keep records of gasoline used for business only, keep all receipts for maintenance of my business car. Why must I list the destination, purpose of trip, and contact person? My destination is a different doctor's office each day. Shall I list restroom stops as 'personal' even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions."

I am sure that you are also hearing from your constituents. The public is mad and they have a right to be—the law in 1984 went too far.

My bill, S. 260 repeals the "contemporaneous" recordkeeping requirement, and returns to the law in operation prior to 1985. Previously a taxpayer was required to maintain adequate records or have other sufficient evidence to corroborate his own statement. Requiring some form of recordkeeping shouldn't change—what must change is the contemporaneous requirement. The new law means that virtually each time a person enters his or her car, an entry must be made in a travel log. The record has to be made "contemporaneous" and cannot be reconstructed at a later date. The end result of these new rules and reuglations has been a massive amount of new paperwork placed on small businesses and their employees.

The reason for the contemporaneous recordkeeping requirement was Treasury's concern that taxpayers were claiming too large a deduction. There probably are a small number of taxpayers who are cheating—however, the "contemporaneous" requirement goes too far—it is like using a sledge hammer to kill a fly. To catch a few, we are now causing a severe hardship for honest taxpayers, I think the correct approach is to return to prior law.

The Deficit Reduction Act of 1984 also contained provisions under the fringe benefit section which, will require that employees be taxed on the value of the personal use portion of their company car. The purpose of the provision is to prevent companies from providing "company cars" as a form of nontaxable income to their executives. It is a goal I fully support; I am worried, however, about the impact this provision will have on small businesses, where the use of the company car is not for tax avoidance. While, my bill does not address this issue, I intend to request hearings on the fringe benefit portion of the act to determine its impact on small businesses and the correlation between the fringe benefit section and the contemporaneous recordkeeping provisions.

Since the enactment of this legislation, many problems have come to light. I think the opportunity to examine these new rules will be welcomed by many in the small business and farming sector of this country. You and the other members of the committee are to be commended, and I will be more than happy to work with you on these important issues. For many years, we've tried to reduce the paper work burden facing our small businesses. With this new rule, we've headed in exactly the opposite direction. Certainly, expanded recordkeeping in the tax area can often improve compliance, but I think we have to consider the burden it places on small businesses. In this case the "contemporaneous" recordkeeping requirement are clearly too burdensome, and should be repealed.

I hope that this can be done in the very near future. I ask unanimous consent that the full text of my statement be included in the record. I ask unanimous consent that the full text of the letters be included in the record.

THE CONARD-PYLE CO.,
West Grove, PA, February 25, 1985.

Senator JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR SENATOR HEINZ: I was very pleased to have the opportunity to be among the Pennsylvania Chamber of Commerce Directors when you spoke to them this past Friday. Thank you for taking the time to be with us and especially for explaining your position in several areas.

As the chief executive and major stockholder of a small business in Pennsylvania, I am particularly troubled by the 1984 Tax Law as it pertains to "Business Use Recordkeeping." I do not understand the need for such recordkeeping and how it could possibly enhance the tax revenue; at least, to the extent of overcoming the headaches, time and effort spent by me and others in our organization for such detailed recordkeeping.

One of the most disconcerting thing about the IRS rules and the law in itself is that there is so little agreement on exactly what has to be kept by whom and how detailed such records should be. Ask a tax attorney and an accounting firm and you get two different answers. Check this out with a third party, and you get a third answer. IRS is most confusing.

In my own case my automobile is used 100% for business with one minor exception. My home is three tenths of a mile from my office. Therefore, I "commute" less than a mile a day and average about 16,000 miles a year in business travel. Much of my mileage is local driving between two of our properties less than four miles apart here in Chester County. If I document each of those trips and all the other miscellaneous business that I have within five miles of my office, I will approach a telephone directory size log by year's end. No auditor or IRS agent is ever going to review it. Such a law is not a good law. Please, on behalf of American business efficiency and productivity change and rid the country of this oppressive, needless law.

Thank you.

Sincerely,

R.J. HUTTON, *President.*

MARS METAL REALTY,
Allison Park, PA.

U.S. SENATE,
Washington, DC.
(Attention: H. John Heinz III)

The rules promulgated by the government regarding the use of cars in business has reached a new high in stupidity and I certainly hope that you will have enough sense to act on repealing the law.

Very truly yours,

JOAN INSLEY.

NEWHARD PHARMACY,
Northampton, PA, February 22, 1985.

Senator JOHN HEINZ,
Washington, DC.

DEAR SENATOR HEINZ: We have been trying to keep mileage records under the new IRS requirements since the first of the year and are tearing out our hair trying to comply.

Our business is a retail Pharmacy. My personal use of the company car consists of driving home at night and back to work in the morning.

Business use of the car consists of deliveries to customers (sometimes 10 or more a day), picking up merchandise at a wholesaler, manufacturer or another store, and going to trade shows and seminars.

Trying to keep a detailed log (with various drivers) is really a full-time job.

I would be willing to claim a reasonable percentage of the mileage as personal use, or a certain amount per day or week; but, please give us a break from this mileage mess.

Yours truly,

PETER J. STAHL.

DAUPHIN CONSOLIDATED WATER SUPPLY CO.,
Harrisburg, PA, February 21, 1985.

Hon. JOHN HEINZ,
U.S. Senate, Washington, DC.

DEAR SIR: I strongly support your co-sponsoring of S260 to repeal the reporting requirements on Company vehicle usage which has been brought about by the recent IRS ruling to account for business and nonbusiness usage of company owned vehicles.

The IRS ruling will have a very real negative impact on our company due to both the loss of time and productivity of our employees keeping the records. In the water utility business, a vehicle is a necessary tool required to carry out the service to our customers. We all strive for efficiency in order to keep our rates reasonable; this does not work to that end.

I appreciate your attention to this very serious matter.

Very truly yours,

DAVID P. WALSH,
Vice President.

MUETZEL & PURSE FLORIST,
Pittsburgh, PA, February 12, 1985.

Senator JOHN HEINZ,
U.S. Capitol, Washington, DC.

DEAR SIRS: In behalf of my firm and fellow independent small business members of Florists' Transworld Delivery, I strongly urge you to support enactment of S. 260 and/or H.R. 531 repealing onerous and burdensome record keeping requirements relating to use of automobiles and vans for business/personal use. The regulation recently proposed by Internal Revenue Service imposes an impossible record keeping burden on small businesses such as ours which use automobiles extensively for business purposes throughout the year. We believe this IRS regulation could significantly increase our cost of doing business an even our ability to stay in business. Your support of these retail bills is vital to us and will be greatly appreciated.

Very truly yours,

ROBERT PURSE.

VOGEL DISPOSAL SERVICE, INC.,
Mars, PA, February 22, 1985.

Hon. JOHN HEINZ III,
Senate Office Building, Washington, DC.

DEAR SENATOR HEINZ: We would like to voice our objections to the new IRS Auto Recordkeeping Rules. These new requirements, are not only time consuming and expensive, but they are disruptive as well.

We have listed several important points which affect us and fellow businessmen tremendously and would like them emphasized.

(a) User instruction time/User log time—The time needed to instruct users on the correct completion of the log sheet and the time needed to log mileage, destination, etc.

(b) Enforcement time by the employer—The time to reprimand those users who do not comply with the completion regulations.

(c) Interference with daily business activities—Takes away from sales time, service time, etc.

(d) Additional bookkeeping—Extra workload for an already busy person.

(e) Collection and verification of log sheets—Who should do it? This requirement takes a person away from their regular duties.

(f) Additional cost for storage and maintenance of these records (file cabinets, etc.).

(g) Additional expense for supplies needed by each user (log sheets, clipboards, etc.).

Our supervisory personnel do not work 8:00 a.m. to 5:00 P.M. days, but instead work on an "on call" basis. These people, more often than not, work 12-hour days. In addition, they are required to make special trips to the office/shop/service location at very odd hours of the day and night directly from their homes as the occasion demands.

We shall appreciate your efforts in getting these new rules repealed or at least revised into more reasonable terms.

Sincerely,

EDWARD L. VOGEL, *President.*

WELLING CONTACT LENS SERVICE,
Port Matilda, PA, February 14, 1985.

DEAR SENATOR HEINZ: As a self-employed businessman who must use my car to provide for my family, I strongly protest the 1985 Auto Log requirements. For years, I have recorded the beginning and ending mileage of my daily business trips, no matter if I used my car, or, in rare emergencies, my truck. I keep records of gasoline used for business only, keep all receipts for maintainance of my business car.

Why must I list the destination, purpose of trip, and contact person? My destination is a different doctor's office each day—must I list each patient I see, and tell whether it was a check-up, new contact lens fitting, or clean and polish?

Shall I list restroom stops as "personal—. Olmi." even though I'm on my way to an office 100 miles away? The IRS is entitled only to a record of auto expenses for business purposes, not a detailed log of my every move. A jealous wife asks fewer questions.

Who is running this country, anyway? Our elected officials or the IRS? The Internal Revenue Service has a history of "computer problems" that has caused irrepairable damage to some businesses. Who gave them so much power? Their hiring of functional illiterates into positions which do not include communication with fellow workers has caused much wasted time and postage for those of us who must prove six times that we paid our taxes three years ago.

I believe the purpose of this new regulation is to discourage the businessman from taking his deduction for auto expenses. It may mean a few dollars more for the IRS from a few people, but my business is too small to survive without it. Is the IRFS trying to cause the collapse of small business and raise unemployment?

Revamp the IRS, get IT working right, and get off the backs of the honest tax payer. Big Brother may be watching you, too.

Sincerely,

THOMAS W. WELLING.

Chairman ROSTENKOWSKI. Thank you, Senator.

Are there any questions of the Senator? If not, we thank you very much.

Secretary Pearlman and Commissioner Egger, we welcome you to the committee. You have sat and listened to my colleagues testify with respect to repeal of these recordkeeping requirements. We will be pleased to hear whatever explanations you have with respect to these regulations. Mr. Pearlman, you may proceed.

STATEMENT OF HON. RONALD A. PEARLMAN, ASSISTANT SECRETARY (TAX POLICY), DEPARTMENT OF THE TREASURY

Mr. PEARLMAN. Mr. Chairman and members of the committee, I thought we might make our statements first and then perhaps answer questions together.

Chairman ROSTENKOWSKI. That is fine.

Mr. PEARLMAN. My statement begins with the words, "I am pleased to be here today." I think that was an error. I am appreciative of the opportunity to be here, however, and I will do my best in as noncontroversial way as possible to try to address what obviously is an extremely difficult area, difficult not only for the Internal Revenue Service and Treasury but obviously difficult for taxpayers.

I think for me the most important thing that I could submit to the committee today is that this issue is not a new one. It was a difficult issue for taxpayers and administrators before the 1984 act.

It obviously remains a sensitive and controversial issue, and, most importantly, in my judgment, it is going to remain difficult without regard to whether the Congress acts further in this area.

As with so many tax issues, recordkeeping represents an effort at balancing. What we need to balance is the well-established need for taxpayers to keep records and substantial business expenses or to determine the amount of income that should be properly includable in an employee's return and, on the other hand, the recordkeeping burden that obviously is imposed on both individual and corporate taxpayers and the administration of the system. We are sensitive to the need to achieve a proper balance. We try to reflect that in the regulations process and will continue to do that both as regulations proceed and in working with the Congress and with this committee to the extent that the committee is interested in making further changes in the legislation.

As we evaluate where we are and where we should be regarding recordkeeping, I think there are several well-established principles extending well before the 1984 act that should be mentioned. The law is clear and has been for a long, long time. Taxpayers who own property, a car, for example, were entitled to deduct only that portion of the property attributable to business use or were required to include in income that portion of the use of property which is personal.

Second, that commuting has long been considered personal use, not business use. I think it is important to note that the 1984 act did not change that rule.

Finally, the taxpayers have always been required to keep records in order to determine business and personal use. Now it is the recordkeeping that is the subject of the 1984 act and on which I would like to to use the rest of my comments.

The 1984 act does not change the rule except as to luxury car and it did not change the rule on commuting. The 1984 act did seek to clarify the recordkeeping. I say clarify because even before the 1984 act it was clear taxpayers had to substantiate business use through the maintenance of records. What was not clear was how and to what extent. Since 1962 it was very clear that very demanding records had to be kept with respect to cars used in connection with travel away from home.

In 1962, in response to the concern that both taxpayers and the Internal Revenue Service and the courts were being burdened with the amount of business use being properly deducted by taxpayers, Congress responded with a rule contained in section 274(d) that documentary evidence had to be maintained to substantiate business travel. Indeed, the legislative history of the 1962 act said that clear contemporaneously kept diaries or account books containing information with respect to the date, amount, nature, and business purpose of an expense may constitute adequate records. Section 274(d) has been in the law for over 20 years. The spirit of 274(d) was that if you did not document the travel expense, you did not get it, and that is clearly the message of the statute and that has been a position of the Service and the courts as issue involving this provision have been litigated over the years.

With respect to local travel, the record requirements were less clear. When there was no evidence of business use, no records kept

at all, no ability on the part of an individual taxpayer or corporate taxpayer to document business use, both the Service and the courts disallowed claimed deductions. When a taxpayer had some probative evidence, then the courts and Revenue Service struggled with trying to establish approximate business use based on appointment books, calendars, other corroborating evidence that a taxpayer could submit including the taxpayer's statement. This was a tedious, inexact process and it is exactly the same problem that Congress addressed in 1962 in the away from home area.

It was also apparent before the 1984 act that because of the lack of recordkeeping standards, we had a serious compliance problem. Commissioner Egger will address this problem in greater detail in his statement.

Let me simply say without adequate records, however we define those adequate records, it is simply impossible for the Internal Revenue Service to administer the law. It was this state of affairs that concerned us back in the summer of 1984. I would suggest this statement feeds on itself. It suggests further noncompliance and business use of a vehicle. Mr. Chairman, you and this committee know that many honest taxpayers who keep records claim no benefit for personal use of a vehicle, as well as millions of taxpayers who do not receive a vehicle as a fringe benefit, can not justify the fairness of a system if we do not try to deal with a compliance problem. The 1984 act sought to do that.

On the House side, as you are well aware, the focus was primarily on luxury cars, but even here in this committee, there was a concern expressed by the Treasury Department and a response by the committee that recordkeeping was inadequate and a presumption was added to the House bill that no greater than 50 percent of the use of a car would be deemed to be business use. The House report went on to say if the presumption were sought to be overcome and a taxpayer claiming greater than 50 percent use, then a higher standard of documentation would be required although the report did not go on to describe what that higher standard of documentation would be.

On the Senate side, in trying to deal with that issue of what kind of documentation would be required, the Finance Committee and ultimately the Congress added a concept of contemporaneous records. It was in the conference report that the concept which I suspect is the most controversial aspect of tnis act, not in the statute itself.

In October, Treasury published records under the recordkeeping rules. These regulations were controversial as you know. We have tried to deal with the areas of controversy. I might offer that both the original regulations and revised regulations were developed on the basis of input that we sought from people outside of Government and within Government and, indeed, from Members on the House and Senate side. We think now based on the conversations we had with people outside of Government that we did respond in major part to many of the criticisms that we agree people legitimately made with respect to original regulation. That is not to say that the regulations are behind us. They remain very controversial.

We have received criticisms on two issues, one being the question of whether certain individual taxpayers should be exempted. As I

pointed out before, there was an unrelated issue to the 1984 act and our regulations, but obviously it was heightened by the recordkeeping rules that were identified as a result of the 1984 act.

The other issue that we have heard a lot about, which is a general criticism, is that it is burden on the small businessman. All of our safe harbors to be included in our revised regulations most significantly the so-called 70-percent rule, the 80 percent applied to the small businessman. Over the months since those regulations have come out, we have tried to identify more specifically what the precise concern was of businessmen, small or large, as well as categories of occupations so that we can try to deal with them.

We are obviously sensitive to the new repeal bills pending in the Congress. We want to respond in a constructive and positive manner to congressional expressions of concern. In doing this, I think everyone must realize the concerns Congress addressed in 1984. They are real concerns, serious concerns and they remain valid. I would offer to you that repeal of 1984 act does not solve the recordkeeping problem. It simply returns us to an environment where recordkeeping requirements are unclear, where taxpayers, the service, and the courts will have to deal with the problem of recordkeeping in a clear environment. This does not mean that the recordkeeping burden on taxpayers is reduced. It simply means that they are going to have to fight cases and examination and the service with no one really knowing what the rules are.

I suggest that we at Treasury, the Service, and in the Congress can best direct our collective efforts at developing recordkeeping rules that are clear, that address both the legitimate tax compliance concerns that we have and the legitimate recordkeeping burden concerns that taxpayers and businessmen have.

We are very willing to examine situations beyond those described in the proposed regulations. Perhaps special treatment in other situations is appropriate. Further, it may well be appropriate to consider whether a more general recordkeeping requirement, such as a calendar, an appointment book can be substituted for the log.

We urge you in your consideration, Mr. Chairman, members of the committee, to consider seriously, however, whether the requirement that records be contemporaneous be dropped. It is one thing to say that a log may be too demanding. It is another thing to say the taxpayers, when they account for business use of any asset, should not keep some kind of records that are more or less contemporaneous with that use. A deduction not based on some kind of contemporaneous record simply cannot be reliable. It cannot be reliable when the taxpayer seeks to prepare his return in good faith, and it certainly cannot be reliable in the examination process.

The absence of contemporaneous recordkeeping would leave the Internal Revenue Service with no real way to effectively administer and enforce the law. It would return us to a system in which honest conscientious taxpayers are made to feel foolish for complying with rules that others ignore. A tax system based on a self-assessment cannot long endure with such disrespect, and the Treasury cannot afford the potential revenue loss that might result from a reduction in the level of recordkeeping.

We therefore urge you to retain a requirement that the taxpayer maintain records and that those records adequately document busi-

ness use of a vehicle and that those records be more or less contemporaneous records.

I would like just to conclude, Mr. Chairman, by saying that in light of the compliance problems that we have discussed and that the Commissioner is going to address, we think it is increasingly important that tax return preparers continue to play a role in promoting compliance. We all know that it is impossible for the Internal Revenue Service to examine on a broad-based basis. We look to tax return preparers to assist us in encouraging compliance and, therefore, we urge the committee, as you review what is in the 1984 act, to retain the rules that require tax return preparers to encourage their clients to maintain adequate records—whatever adequate records are deemed to be.

Mr. Chairman, I am going to stop at this point and let the Commissioner make his statement.

[The prepared statement follows:]

STATEMENT OF RONALD A. PEARLMAN, ASSISTANT SECRETARY (TAX POLICY), DEPARTMENT OF THE TREASURY

Mr. Chairman and members of the committee, I am pleased to be here today to present the Treasury Department's views on the requirement that taxpayers maintain adequate contemporaneous records to substantiate business use of vehicles. This requirement was imposed in the Deficit Reduction Act of 1984 (the "DRA") to clarify the recordkeeping rules applicable to vehicles used for both business and personal purposes. It was designed to address significant concerns of the Treasury Department and the Congress that taxpayers who won their own vehicles were overstating the business use of these vehicles and claiming excessive tax deductions. Similarly, in the case of vehicles provided to employees by their employers, there was evidence that the income attributable to personal use of these vehicles was significantly understated.

In considering appropriate requirements for the substantiation of business use of vehicles, it is of course necessary to balance revenue and compliance objectives against the costs and burdens that recordkeeping requirements entail for ordinary taxpayers. Among the most important objectives of this Administration has been to reduce the role of government in private lives, including the paperwork and regulatory burdens that governments characteristically impose. The Treasury Department remains committed to this objective and will work to ease regulatory burdens connected with the administration of the tax laws wherever possible.

Our determination to limit regulatory burdens is necessarily disciplined, however, by the need to ensure taxpayer compliance with the Federal income tax system. I needn't remind the members of this Committee that our system of taxpayer self-assessment, which is a marvel to the rest of the world, depends upon public confidence that the tax laws are not only fair, but also fairly administered and enforced. We believe that the substantiation requirements established by the DRA provide the appropriate framework within which to strike a proper balance between fair administration and the burdens of recordkeeping. The specific recordkeeping requirements adopted under the DRA may have been unduly burdensome; recently issued regulations have moderated those requirements, however, and we are willing to work with this Committee to further refine the rules so as to preserve public confidence in the fairness of the system without unduly burdening taxpayers.

BACKGROUND

A. Law Prior to the Deficit Reduction Act of 1984

To understand the reasons for Congress' action in 1984 it is important to review the rules in this area as they existed before the DRA. Prior law applied different substantiation requirements to deductions for business use of a vehicle depending on whether the business use was for "local transportation" or in connection with travel away from home. Business use of a vehicle for local transportation was subject to the substantiation rules applicable to business expenses generally under Section 162 of the Code, whereas the use of a vehicle for travel away from home was subject to the more stringent recordkeeping rules applicable under Section 274(d).

Although a taxpayer bears the burden under Section 162 of proving the amount of an expense and its business purpose, the type of records needed to meet this burden where a vehicle was used locally was unclear under prior law. Without a log, diary or other contemporaneous record indicating the number of miles driven for business and personal purposes, taxpayers, the Internal Revenue Service and the courts had great difficulty determining the amount of business use of a vehicle. When no probative evidence was produced, the courts and the Service routinely disallowed claimed deduction in full.

When a taxpayer came forward with some probative evidence as to business use, however, the Internal Revenue Service or, ultimately, a court was required to estimate the business use of a vehicle based on evidence such as appointment calendars, business records and any other corroborating evidence, including the taxpayer's own statement. See *Cohan* v. *Commissioner*, 39 F. 2d 540 (2d Cir. 1930). The audit files of the Internal Revenue Service and published tax cases are replete with instances where the taxpayer's failure to keep sufficient records has required the Internal Revenue Service and the courts to engage in the tedious and inexact process of estimating business use by reconstructing records years after the actual use occurred.

Obviously, under prior law, many taxpayers who used vehicles for both business and personal purposes were not keeping adequate records of their business use. Some of these taxpayers made good faith and reasonably accurate estimates of business use, but many others, whether intentionally or not, substantially overstated their actual business use. In addition, employers provided vehicles to employees and routinely failed to account properly for the employees' personal use of the vehicles.

As the testimony of Commissioner Egger will address in more detail, the audit experience of the Internal Revenue Service under prior laws confirms the seriousness of this noncompliance problem. The inability of the Internal Revenue Service to administer the rules regarding personal and business use of vehicles left even well-intentioned taxpayers with little incentive to maintain adequate records and encouraged others to overstate the business use of their vehicles. Honest taxpayers who kept records and did not claim deductions for the personal use of a vehicle, as well as those taxpayers who did not receive the use of a vehicle as a fringe benefit, justifiably concluded that they were shouldering an unfair part of the total tax burden because of the abuses in this area. As I mentioned earlier, such perceptions of unfairness tear at the fabric of our self-assessment system. A basic purpose of the changes brought about in the DRA was to preserve public confidence in the fairness of the tax system.

It is important to contrast the prior law substantiation requirements for local business use of a vehicle with the stricter recordkeeping rules applied to travel away from home under Section 274(d). Under that section a taxpayer must substantiate, by adequate records or by other sufficient documentary evidence corroborating his own statement, the amount of a travel expense, the time and place of the travel and the business purpose of the expense. The legislative history to Section 274(d) states that "a clear, contemporaneously kept diary or account book containing information with respect to the date, amount, nature and business purpose of the expense may constitute an adequate record under this provision."

The regulations issued under Section 274(d) , as enacted in 1962, provided that taxpayers could substantiate the use of a vehicle for travel away from home or business by a log, diary or similar record made at or near the time the travel occurred. The intended effect of Section 274(d) was to reduce the administrative and judicial conflicts over the amount of travel expenses incurred by taxpayers while traveling away from home. The essence of the rule was quite simple—no records, no deduction. The courts have interpreted these requirements accordingly, refusing to allow any deductions to taxpayers for use of a vehicle away from home where the taxpayer has no documentary evidence establishing the level of business use.

B. The Deficit Reduction Act of 1984

Prompted by reports that cost recovery allowances were spurring sales of expensive automobiles as well as the knowledge that a substantial number of taxpayers routinely overstated the business use of vehicles, Congress began considering means to curtail business expense deductions claimed for vehicles used in business. The House-passed version of the DRA imposed a limit on the cost of luxury automobiles that could be taken into account in computing depreciation deductions and the investment credit. In addition, the House bill created a presumption that no more than 50 percent of the use of an automobile was for busines purposes. The House Report makes clear that taxpayers remained subject to the prior law rule that all business use of a vehicle must be substantiated, but states that this Committee intended "to elevate the standard of proof in cases where the proportion of business

use claimed exceeds 50 percent." H. Rept. 98-432, 98th Cong., 2d Sess. 1388 (1984). The bill, however, was silent on the type of records taxpayers would have to keep to show business use in excess of 50 percent.

The Senate also adopted limits on cost recovery allowances for luxury automobiles, but expanded the compliance provisions to impose specific requirements relating to the types of records taxpayers would be required to keep to claim any deduction or credit with respect to a vehicle. Specifically, the Senate-passed version of the DRA modified Section 274(d) to require that taxpayers must maintain adequate contemporaneous records detailing all business use of a vehicle. The Senate bill also imposed a requirement that tax return preparers could not sign a tax return without verifying the accuracy of a taxpayer's records supporting a claimed deduction.

In conference, the restrictions on cost recovery allowances for luxury automobiles were modified, but the compliance provisions included in the Senate bill were adopted with only minor changes. The DRA provisions relating to recordkeeping state no exceptions; taxpayers must document with adequate contemporaneous records the business use of any vehicle. The Conference Report indicates the breadth of the rule:

If the taxpayer does not have adequate contemporaneous records, no credit or deduction is allowed with respect to that item . . . The Conferees expect that these records will reflect with substantial accuracy the business use of the property. The records must indicate the business purpose of the expense or use, unless the business purpose is clear from the surrounding circumstances.

H. Rept. 98-631, 98th Cong., 2d Sess. 1031 (1984). With respect to automobiles, the Conference Report explicitly states that "logs recording the date of the trip and the mileage driven for business purposes must be kept."

In addition, the Conferees provided that any underpayment attributable to a failure to keep adequate contemporaneous records is treated as negligence, unless the taxpayer produces clear and convincing evidence to the contrary. The Conference Report further provides that claiming a deduction or credit without adequate contemporaneous records could lead to the imposition of tax fraud penalties.

RECORDKEEPING REGULATIONS

The Treasury Department published temporary regulations on October 24, 1984 implementing the DRA changes to Section 274(d). With one narrow exception for vehicles of a type not ordinarily susceptible to personal use, the temporary regulations imposed on all vehicles used for business purposes the requirement outlined in the Conference Report that logs be maintained detailing the date, elapsed mileage and business purpose of each trip. Under the statute, the log requirement applies to taxable years beginning on or after January 1, 1985.

As the effective date of the recordkeeping rules approached, the Internal Revenue Service began to receive a significant number of complaints and comments on the temporary regulations. These comments indicated that the changes to the recordkeeping rules, as well as the temporary regulations implementing those changes, applied too broadly, sweeping within the scope of the log requirement many vehicles and taxpayers that did not involve any of the abuses which prompted Congressional action.

In recognition that the new rules applied too broadly, the Internal Revenue Service announced on January 25 its intention to issue revised regulations, effective January 1, 1985, clarifying the generally applicable recordkeeping requirements and providing a series of special rules which would substantially reduce or completely eliminate the recordkeeping requirement in certain circumstances. In developing the revised regulations, the Internal Revenue Service carefully reviewed each of the comments on the original regulations and also conferred with company administrators and independent consultants knowledgeable on the business use of vehicles. The information gathered from the comments and from these discussions formed the basis for the rules adopted in the revised regulations.

These revised regulations change the recordkeeping rules signficantly. First the new temporary regulations clarify that for those taxpayers required to maintain logs, a single entry is sufficient for any period of uninterrupted business use. Thus, for example, a salesman who uses a vehicle to make a series of appointments during a day and has no (other than de minimis) personal use of the vehicle for that day need make only one entry that summarizes the business use. This salesman would only have to record the total mileage driven during the day, not the mileage for each stop. This rule should significantly reduce the recordkeeping burden for those taxpayers who are required to keep logs.

The temporary regulations also provide several special rules that eliminate the log requirement in a variety of circumstances. First, the temporary regulations provide that a vehicle is not subject to the log requirement if it is used in a business, kept on the business premises overnight, and the business has instituted a policy against personal use of the vehicle. Second, a vehicle which is used by employees for commuting, but which otherwise satisfies the above requirements is also exempt from the log requirement if the employer accounts for the commuting value of the vehicle by including $3 per day in the employee's income. We expect that these two special rules will eliminate the recordkeeping requirement for many business automobiles and virtually all vans, trucks, and special purpose vehicles used in a business.

The other special rules contained in the new temporary regulations are premised on assumptions as to the level of business use of certain classes of vehicles. A taxpayer satisfying certain conditions may elect to treat a designated percentage of the use of a vehicle as business use and the balance as personal use. Alternatively, the taxpayer may elect to keep track of only personal use of the vehicle. These options can be used in two circumstances. First, they are available with respect to a vehicle used in the business of a taxpayer who spends most of a normal business day making deliveries or making calls on customers or clients. Such a taxpayer may elect to treat 70 percent of the use of such automobile (or other vehicle designed for personal use) as for business purposes; the taxpayer may elect to treat 80 percent of the use of any other vehicle (e.g., a truck) as business use. The second circumstance in which these options are available is for vehicles (other than automobiles or other vehicles designed for personal use) regularly used in the business of farming by a taxpayer whose gross income (excluding passive investment income) consists almost exclusively of farm income (at least 70 percent).

Based on the comments which the Internal Revenue Service received on the original regulations, as well as the information supplies by firms and independent consultants with extensive experience on the business use of vehicles, we believe these special rules will exempt from the log requirement a substantial portion of all vehicles used for business purposes. Comments received from interested taxpayers subsequent to the release of those revised regulations confirm this belief.

Of course, the recordkeeping rules remain controversial despite the issuance of the revised regulations. We have received a large number of comments regarding the burden imposed on small businesses by the recordkeeping requirement. In addition, the DRA focused attention on whether a policeman or other public safety employee is taxable on the use of an official vehicle to commute to and from his home.

CONSEQUENCES OF REPEAL

Numerous bills to repeal the recordkeeping rules enacted as part of the DRA have been introduced in both the House and Senate. Repeal of the provisions would resolve few of the issues in this area. Moreover, repeal could increase noncompliance and certainly would result in a significant revenue loss.

Repeal of the DRA recordkeeping rules will not remove the prior law requirement that taxpayers substantiate the business use of vehicles. It will merely perpetuate the uncertainty regarding the nature of the recordkeeping that is required and contribute to the waste of administrative and judicial resources that must be dedicated to resolving controversies where adequate documentary records are not available.

The compliance concerns which prompted Congress to act in 1984 remain valid. Indeed, the controversy and publicity that have surrounded the temporary regulations have heightened taxpayers' awareness of the audit limitations of the Internal Revenue Service in this area, and repeal of the DRA rules could lead to increased noncompliance.

Although the recently revised regulations provide substantial relief from the rules as originally imposed by the DRA and the initial temporary regulations, we recognize that even under the revised regulations many taxpayers will be required to maintain logs. For this reason, the Treasury Department is willing to work with this Committee to refine the existing recordkeeping rules in an effort to preserve the principles of the DRA changes while minimizing the recordkeeping burden on business and the administrative burden of the Internal Revenue Service.

There may be circumstances beyond those identified in the modified regulations which warrant special exceptions to the general recordkeeping rules. If such circumstances are identified we will endeavor to craft the appropriate exceptions. To that end, we invite the members of this Committee and taxpayers generally to assist the Treasury Department in identifying situations which warrant exceptions to the recordkeeping rules.

We are also willing to examine the generally applicable recordkeeping standard to determine whether more practical approaches to substantiation are feasible in lieu of the requirement that taxpayers maintain logs. For example, we will consider whether other contemporaneous records, such as a calendar or appointment book, could serve as a basis for determining the business use of a vehicle.

We urge, however, that the requirement that taxpayers maintain some type of contemporaneous records be retained. When the circumstances of a taxpayer's use of a vehicle do not warrant a special rule, contemporaneous records are necessary to account accurately for business and personal use. A deduction not based on such records cannot be reliable. Perhaps more importantly, the absence of a contemporaneous recordkeeping requirement would leave the Internal Revenue Service unable to effectively administer or enforce the law. We would return to a system in which honest, conscientious taxpayers are made to feel foolish for complying with rules that others ignore with impunity. A tax system based on self-assessment cannot long endure such disrespect nor can the Treasury afford the potentially substantial loss in tax revenues. We therefore urge this Committee to retain a requirement that taxpayers maintain records that adequately document business use of a vehicle.

Finally, in light of the compliance problems we have experienced in this area, it is increasingly important for tax return preparers to play a role in promoting compliance with the recordkeeping rules. Therefore, we urge this Committee to retain the DRA rules relating to tax return preparers.

SUMMARY

The Treasury Department is willing to work with this Committee to develop reasonable recordkeeping rules for taxpayers to substantiate the business use of vehicles. We urge that the Committee recognize the importance of retaining a requirement that a taxpayer maintain sufficient contemporaneous records substantiating his right to claim deductions for the business use of a vehicle.

Chairman ROSTENKOWSKI. Thank you, Mr. Secretary.

Commissioner Egger, you may proceed.

STATEMENT OF HON. ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE

Mr. EGGER. I would like to put in some perspective here if I can—part of the problem we have heard earlier this morning about going back to the earlier rules.

Before the amendments of the 1984 act, taxpayers could deduct their expenses for business use of automobiles only to the extent they could establish the nature and the extent of the business use. The types of records required to substantiate the use of automobiles varied depending upon whether the travel was "away from home" or "local." Expenses for travel away from home were required to be substantiated under 274(d) by adequate records or by sufficient evidence corroborating the taxpayer's own statement.

On the other hand, local travel expenses were subject to the more general substantiation rules of section 162. Under section 162, a taxpayer may deduct ordinary and necessary expenses incurred in carrying on a trade or business, but bears the burden of proving the amount of an expense and its business purpose.

The courts, however, have consistently denied deductions when taxpayers have failed to provide proof of expenses for business use of automobiles. And a number of the cases that I would like to draw to your attention are cited in my complete statement.

Despite the longstanding rules regarding the need to substantiate expenses, problems remained in the substantiation area. These problems frequently took the form of overstated proportions of business usage of automobiles. While the Service does not have any nationwide compliance project to check specifically on automobile

substantiation, we do have some specific data available on the issue. This data comes from recent Taxpayer Compliance Measurement Program surveys, and from the Statistics of Income reports, as well as selected cases which are currently under examination in the field. Let me briefly review some of this information for you.

The Service conducts a Taxpayer Compliance Measurement Program tc measure taxpayer compliance with the tax laws and the regulations. This long-range enforcement and research effort measures total compliance and the major characteristics of compliance as well as noncompliance. In addition, this information is used to formulate the return criteria which we use to select returns for examination. A TCMP survey of individual tax returns filed on forms 1040, 1040A, or 1040EZ is conducted every 3 years. The individual survey is based upon a stratified random sample of about 50,000 filed returns that are representative of the entire filing population. Returns selected for the TCMP survey undergo a comprehensive examination of every line item on the return in order to determine its accuracy and the true tax liability. The most recent data available are for tax year 1979. Tax year 1982 data will be available in a few months.

The most recent TCMP data involving automobile expenses shown on schedule C, which is the profit and loss from business, indicate that about 5.5 million taxpayers claimed nearly $10.6 billion in automobile expenses; 48 percent of the 5.5 million taxpayers who claimed automobile expenses made errors on their returns; 1.8 million taxpayers overstated their automobile expenses by more than $1.4 billion, while somewhat less than 1 million taxpayers understated deductions by about $400 million.

Another way these expenses find their way into the tax returns is by way of form 2106, which is the form used by employees for employee business expenses. In 1979, 5.8 million individual taxpayers claimed a total of $10.7 billion for employee business deductions. This line item includes all expenses listed on form 2106, which include all employee business expenses, such as automobile expenses and other travel expenses. Of that amount, the amount of overstated deductions was $2.8 billion. Another group of taxpayers understated their allowable expenses by about $700 million.

To summarize the schedule C and form 2106 data, we estimate that about 50 percent of the 11.3 million returns claiming these expenses would be subject to adjustment. While we do not have current estimates of lost revenue resulting from the overstatement of expenses, our data indicates that taxpayers claimed something over $3 billion in excess tax benefits.

But the numbers tell only part of the story. As tax administrators, we must face the problems of substantiation of expenses on a daily basis. In examination after examination, our agents and examiners are faced with records which fail to show the extent of business or personal use. Even worse, we frequently find that taxpayers simply keep no records at all. In these cases we are forced to deal with what the Joint Committee on Taxation has identified as "after-the-fact optimistic estimates—based on inexact recollection." Not surprisingly, significant compliance problems continue.

In order to show you the kind of problems the IRS employees face in this area on a day-to-day basis, we contacted several of our

regions for their firsthand experiences. These responses are indicative of the type of problems that are typically seen.

In one, during 1983 and 1984, a district completed examinations of 937 employees of one large corporation. These individual cases were selected because the issue was identified during the audit of the corporation. Managerial, administrative, and field employees were supplied automobiles by the corporation, which also paid all operating expenses for the vehicles. No employee recordkeeping was required by the corporation regarding personal versus business use of the automobiles. The examination issue was whether to include the fair rental value and operating expenses for the personal use of the automobiles in gross income of the employees. As a result of these examinations, the Service made adjustments in 92.6 percent of the cases. The average adjustment per return was $846, and the combined total of additional assessments was over $800,000.

In a second example, a district had several large corporate cases with auto expenses issues. In one instance, the use of luxury cars by a company's officers resulted in adjustments of more than $240,000. In another case, personal use of automobiles by officers resulted in an adjustment of $65,000.

In a third example, the districts in one region identified a minimum of 1,116 cases in process or recently closed involving taxpayers claiming 100 percent business use of automobiles. The region has found that, almost without exception, examinations of these returns resulted in adjustments to the amount claimed. Usually the taxpayer has inadequate records or none at all. Specific cases involving automobile expenses include the following:

One large corporate exam resulted in $35,000 in additional employment taxes for the personal use of corporate automobiles.

Another, a family professional corporation claimed 100 percent business use of three automobiles. Our examination resulted in the disallowance of deductions for one automobile and substantial reduction in business use of the other two. The total adjustment here was $16,000.

Mr. Chairman, I could go on with many more examples, but I think you see the point that I am making here.

Since Assistant Secretary Pearlman has described both the legislative history surrounding the enactment of the new rules and the regulations themselves, I am not going to burden the committee with further recitation of that sort.

Mr. Chairman, we always invite taxpayers to provide the Service with written comments on proposed regulations. The information provided by the comment process generally enables us to improve and to refine regulations before they become final. In this instance, our normal procedures of publishing proposed regulations and receiving comments prior to the issuance of final regulations was not followed because of the need for immediate guidance to taxpayers. As a result, the regulations at issue are in both proposed and temporary form. We urge the public to provide us with comments by April 8, 1985. In addition, a public hearing on these regulations is already scheduled for April 16, 17, and 18.

Mr. Chairman, today Assistant Secretary Pearlman and I have attempted to demonstrate that the Service's initial temporary and

proposed regulations requiring substantiation of a deduction or credit by "adequate contemporaneous records" were an accurate interpretation of the law and of congressional intent. We believe that a fair reading of the legislative history and the joint committee explanation confirms that judgment.

As you debate this issue, I would hope that you would keep the fundamentals of sound tax administration clearly in mind. As you are aware, the income tax system in this country is based on voluntary self-assessment. We depend on taxpayers to honestly and accurately assess their tax liabilities and, for the most part, the taxpayers justify the faith that we place in them.

If we expect taxpayers to continue to warrant our faith, we must endeavor to assure them that the system works and the system is fair. If taxpayers lose their respect for the system, we can expect serious consequences in the area of voluntary compliance.

While I recognize the burdens associated with recordkeeping, I see no realistic alternative to the maintenance of records. Records not only enable the tax administrator to perform its function, but also assure that taxpayers will receive the full amount of tax benefits to which they are entitled.

Mr. Chairman, I will be pleased, along with Assistant Secretary Pearlman, to try to answer any questions you or members of the committee may have.

[The prepared statement follows:]

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE

Mr. Chairman and members of the committee, it is a pleasure to be here with Assistant Secretary Pearlman and you today to discuss regulations relating to recordkeeping for automobiles and certain other property.

In my testimony, I will discuss the administrative problems under prior law; the amendments made by Public Law 98-369, the Tax Reform Act of 1984; and our efforts to implement the law.

With me today are several officials from the Service familiar with this issue. We will be available to try to answer any questions you may have at the conclusion of my opening statement.

RECORDKEEPING UNDER PRIOR LAW

Prior to the amendments made by the Tax Reform Act of 1984, taxpayers could deduct expenses for the business use of an automobile only to the extent that they could establish the nature and extent of the business use. The types of records which were required to substantiate the use of automobiles varied depending upon whether the travel was "away from home" or "local". Expenses for travel away from home were required to be substantiated under section 274(d) by "adequate records or by sufficient evidence corroborating . . . [the taxpayer's] own statement". On the other hand, local travel expenses were subject to the more general substantiation rules of section 162. Under section 162, a taxpayer may deduct ordinary and necessary expenses incurred in carrying on a trade or business, but bears the burden of proving the amount of an expense and its business purpose.[1] The courts have consistently denied claimed deductions when taxpayers have failed to provide proof of expenses for the business use of automobiles.[2]

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[1] For local travel expenses, courts have used the so-called *Cohan* rule (See *Cohan* v. *Commissioner*, 39 F.2d 540 (2d Cir. 1930) to approximate deductible expenses where sufficient records did not exist. Since the enactment of section 274(d) in 1962, the *Cohan* rule has not been applicable to travel expenses incurred by taxpayers while away from home.

[2] See F.G. *Tidwell* v. *Commissioner*, 298 F.2d 864 (4th Cir. 1962) (taxpayer did not satisfy burden of establishing by "detailed evidence" the amount to be allocated to business and personal use); *Lustman* v. *Commissioner*, 322 F.2d 253 (3rd Cir. 1963) (taxpayer was unable to furnish business records to substantiate extent of business use of automobile; taxpayer offered only his

Continued

ADMINISTRATIVE PROBLEMS UNDER PRIOR LAW

Despite the longstanding rules regarding the need to substantiate expenses, problems remained in the substantiation area. These problems frequently took the form of overstated proportions of business usage of automobiles. While the Service does not have any nationwide compliance project to check specifically on automobile substantiation. We do have some specific data available on the issue. This data comes from recent Taxpayer Compliance Measurement Program (TCMP) surveys, from Statistics of Income reports, and from selected cases now under examination in the field. Let me briefly review some of this information for you.

The Service conducts a Taxpayer Compliance Measurement Program to measure taxpayer compliance with the tax laws and regulations. This long-range enforcement and research effort measures total compliance and the major characteristics of compliance and noncompliance. In addition, this information is used to formulate the return criteria the Service uses to select returns for examination. A TCMP survey of individual tax returns filed on Forms 1040, 1040A or 1040EZ is conducted every three years. The individual survey is based upon a stratified random sample of approximately 50,000 filed returns that are representative of the entire filing population. Returns selected for the TCMP survey undergo a comprehensive examination of every line item on the tax return in order to determine its accuracy and the true tax liability. The most recent data available are for tax year 1979; tax year 1982 data will be available in a few months.

The most recent TCMP data involving automobile expenses shown on Schedule C, Profit or (Loss) from Business or Profession, indicate that approximately 5.5 million taxpayers claimed almost $10.6 billion in automobile expenses. Forty-eight percent of the 5.5 million taxpayers who claimed automobile expenses made errors on their returns: 1.8 million taxpayers overstated their automobile expenses by over $1.4 billion while somewhat less than 1 million taxpayers understated deductions by $434 million.

Another way these expenses find their way into tax returns is by way of Form 2106, Employee Business Expenses. In 1979, 5.8 million individual taxpayers claimed a total of $10.7 billion for employee business expense deductions. (This line item includes all expenses listed on Form 2106 [3] which include all employee business expenses, such as automobile expenses and other traveling expenses for meals and lodging.) Of that amount, the amount of overstated deductions was $2.8 billion. Another group of taxpayers understated their allowable expenses by $700 million.

To summarize the Schedule C and Form 2106 data, we estimate that approximately 50% of the 11.3 million returns claiming these expenses would be subject to adjustment. While we do not have current estimates of lost revenue resulting from the overstatement of expenses, our data indicate that taxpayers claimed well over $3 billion in excess tax benefits.

The numbers tell only part of the story. As tax administrators we must face the problems of substantiation of expenses on a daily basis. In examination after examination, our examiners are faced with records which fail to show the extent of business or personal use. Even worse, we frequently find that taxpayers simply keep no records at all. In these cases we are forced to deal with what the Joint Committee on Taxation has identified as "after-the-fact, optimistic estimates . . . based on inexact recollection." Not surprisingly, significant compliance problems continue.

In order to show you the kinds of problems IRS employees face in this area on a day-to-day basis, we contacted several of our regions for their first-hand experiences. These responses are indicative of the type of problems that are typically seen.

Example 1: During 1983–1984, this district completed examinations of 937 employees of a large corporation. These individual cases were selected because the issue

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testimony); *Corr* v. *Commissioner*, 77 T.C. 1096 (1981) (taxpayer kept no "specific records" as to the business use of his automobiles; the lack of records prevented the court from determining the amount of the allowable deductions with reasonable accuracy); *Hynes* v. *Commissioner*, 74 T.C. 1266 (1980) (taxpayer's testimony unsupported by any other evidence was not sufficient to establish that the automobile expenses were incurred for business purposes); *Bussararger* v. *Commissioner*, 52 T.C. 819 (1969) (taxpayer's failure to maintain mileage or expense records resulted in determination that taxpayer failed to establish extent of business usage claimed).

[3] In order to better understand the portion of these adjustments that may be applicable to inadequate records relating to automobile expenses, we took a quick sample of TCMP cases and analyzed the work papers associated with these cases. This small sample shows that 70% of Form 2106 expenses that were adjusted related to automobile expenses. Further, about 40% of the adjustments were made because taxpayers were unable to show that they used their vehicles for business purposes. Although this information is based on a random sample, it should not be considered statistically precise.

was identified during the audit of the corporation. Managerial, administrative, and field employees were supplied automobiles by the corporation, which also paid all operating expenses for these vehicles. No employee recordkeeping was required by the corporation regarding personal versus business use of the automobiles. The examination issue was whether to include the fair rental value and operating expenses for the personal use of the automobiles in the gross income of the employees. As a result of these examinations the Service made adjustments in 92.6% of the cases. The average adjustment per return was $846 and the combined total of additional assessments was $800,000.

Example 2: Another IRS district had several large corporate cases with auto expense issues. In one instance the use of luxury autos by a company's officers resulted in adjustments of more than $240,000. In another instance the personal use of automobiles by officers resulted in an adjustment of $65,000. This district has at least one additional large case currently pending.

Example 3: The districts in one region identified a minimum of 1,116 cases in progress or recently closed involving taxpayers claiming 100% business use of automobiles. The region has found that, almost without exception, examinations of these returns result in adjustments to the amount claimed—usually for lack of records. Specific cases involving automobile expenses include the following:

A large corporate examination resulted in $35,000 in additional employment taxes for the personal use of corporate automobiles by executives.

A family professional corporation claimed 100% business use of three automobiles. Our examination resulted in the disallowance of deductions for one automobile and substantial reduction in business use of the other two. The total adjustment was $16,000.

A professional corporation claimed 100% business use of its automobiles. Our examination resulted in $4,000 in additional tax to each of the professionals.

Example 4: A sampling of cases from another region involving automobile expense adjustments had the following results:

Amount claimed on tax return	Amount allowed after audit	Reason for adjustment
$3,850	0	No records. Taxpayer would not reconstruct records.
1,652	1,203	Taxpayer reconstructed records; allowed in part.
2,358	0	No records. Taxpayer would not provide reconstructed records.
2,100	0	No records. Taxpayer would not reconstruct records.
2,720	0	Taxpayer could not show that expenses exceeded reimbursement.
2,938	2,850	Taxpayer had no records, but was able to reconstruct.
3,625	2,158	No records. Amount allowed based on reconstruction.
1,170	334	Do.
3,625	2,158	Do.
1,170	334	Do.
4,315	3,500	Do.

CONGRESSIONAL ACTION

In section 179 of the Tax Reform Act of 1984, Congress addressed the substantiation problem directly by amending Internal Revenue Code section 274 (D) to require that taxpayers must substantiate by "adequate contemporaneous records" any credit or deduction with respect to expenses governed by section 274, including what the code defines as "listed property."[4] "Contemporaneous", the only new word of significance in the law, generally is taken to mean "occurring or originating during the same time". At the same time the new requirement of adequate contemporaneous records was added. Congress removed from the statute the taxpayer's ability to rely on the use of "other corroborating evidence."

According to the legislative history of the Tax Reform Act of 1984, this legislative amendment was intended to ensure that some type of record (e.g., log, diary, journal) of the business use of listed property was made at or near the time the property was so used. For example, the Ways and Means Committee's Supplemental Report 98-432, Part 2, stated that "[t]he committee understands that significant compliance

[4] "Listed property" is defined in new Code section 280F(D)(4), and includes (among other things) passenger automobiles and any other property used as a means of transportation.

problems exist under current law due to overstatements of the proportion of business use of automobiles [and also] . . . believes that an additional measure should be provided to assist compliance and enforcement in this area." Further, the Committee stated its intentions to "elevate the standard of proof" in those instances in which a taxpayer claimed more than 50% business use.

The Senate Finance Committee's report 98-169, Volume I, noted a concern that "[M]any taxpayers may be abusing the investment tax credit, the allowance for depreciation, and the deductibility of business expenses by recharacterizing personal use of assets as business use." This abuse, the Committee stated, "undermine[d] public confidence in the fairness of the tax laws and in the ability of the Internal Revenue Service to adequately enforce those laws." Thus, the Committee recommended that ony "contemporaneous records reflecting . . . [the] business and personal use of tangible property . . ." would be sufficient to substantiate deductions of credits.

The Conference Committee's report 98-861 contains perhaps the most succinct statement of Congress' intent in this area. The Conferees adopted the rule that taxpayers are required to substantiate the business use of "listed property" by adequate contemporaneous records. The Conferees expected that those records would "reflect with substantial accuracy the business use of the property." Those records, the Conferees explained, must indicate "the business purpose of the expense or use, unless . . . [that] purpose is clear from the surrounding circumstances." They also noted that with respect to automobiles, "logs recording the date of the trip and the mileage driven for business purposes must be kept."

Finally, the general explanation of the Tax Reform Act of 1984 prepared by the staff of the Joint Committee on Taxation (JCS-41-84) and released after publication of the regulations issued in October echoes the requirements noted in the Conference Committee's report especially with respect to the Congressional intent in passing the current recordkeeping requirements. The Committee staff indicated Congress' concern that "significant noncompliance under prior law . . . [resulted] from the overstatement of deductions and credits related to the business use of automobiles and other property that typically is used for personal purposes." The Joint Committee report stated the problem with "after-the-fact optimistic estimates of . . . [business] use based on inexact recollection" prompted the Congress to change the law because the "requirement of prior law that adequate records be kept was not observed uniformly." For those reasons, the Staff noted, "Congress believed that it . . . [was] appropriate to require that contemporaneous records must be kept as a condition of claiming deductions with respect to this property."

SERVICE EFFORTS TO ADMINISTER THE LAW

One of the key steps in the process of implementing any new tax law is the issuance of regulations. In this case, the IRS' temporary and proposed regulations on substantiation through "adequate contemporaneous records" appeared in the Federal Register of October 24, 1984. Generally, those regulations—

Defined the term "adequate contemporaneous record" as a log, journal, diary or other similar record.

Provided that separate entries for each use must indicate the name of the user, the date of the use, the purpose of the use, and the miles driven or time expended.

Noted that log entries were only required for the business use of the property when the personal use may be determined without the necessity for a separate entry. For example, an automobile's overall use can be determined from odometer readings at the beginning and end of each taxable year. Thus, a taxpayer's record of only business use would suffice. In all other cases, entries for each use must be made.

Stated that these log entries must be made at or near the time the property is used.

Provided that certain property used as a means of transportation is not "listed property," and thus not subject to the requirement to keep adequate contemporaneous records, because it is ordinarily not susceptible to personal use. Examples of this property include forklifts, cement mixers, and trucks designed for specific business purposes, such as a refrigerated delivery truck.

On February 20, 1985, the Service supplemented the October 24 regulations by the publication of revised temporary and proposed regulations. Generally, the regulations as supplemented permit taxpayers to satisfy the recordkeeping requirements by single entries for round trips and periods of interrupted business use. For example, a person making a series of deliveries at different locations which begins and ends at the business premises and which may include a stop at the business prem-

ises in between two deliveries, may account for these activities with a single entry in a log or other record. Likewise, a salesperson away from home for several days on a business trip may make a single entry in a log for the entire trip. De minimis personal use, such as a stop for lunch on the way between two business stops, is not considered any interruption in business use. Also, in the case of employer-provided automobiles, the regulations permit the employer to rely on the employee's summary statement if that statement is based on "adequate contemporaneous records".

The regulations also provide the following four special rules when the recordkeeping requirement will be eliminated or substantially reduced:

1. Farm vehicles. If a taxpayer's gross income from the business of farming exceeds 70 percent of the taxpayer's gross income from all sources (excluding passive investment income), two methods of recordkeeping are available with respect to vehicles that are regularly used directly in connection with the business of farming. The first option is that the taxpayer may keep records of the personal use of a vehicle. Alternatively, if the vehicle is designed primarily for commercial use (such as a truck) the taxpayer may treat 80 percent of the use as business use and 20 percent as personal use. With respect to any other vehicle (such as an automobile) the taxpayer may treat 70 percent as business use and 30 percent as personal use. It should be noted, however, that adequate contemporaneous records need not be kept for special-purpose farm vehicles, such as tractors and combines, since those vehicles are ordinarily not susceptible to personal use.

2. No personal use. Employers (including sole proprietorships and partnerships) who use vehicles in a trade or business need not keep logs if the vehicles are owned or leased by the employer and made available for use by one or more employees for business purposes. When not used in the employer's business, the vehicles must generally be kept on the employer's business premises. Also, the employer must have a policy against use of the vehicles for personal purposes (other than de minimis personal use, such as a stop for lunch).

3. Commuting. Employers (including sole proprietorships and partnerships) who for business reasons require employees to use business vehicles for commuting are generally not subject to the recordkeeping requirement so long as the only personal use of the vehicles is for commuting (other than *de minimis* personal use such as a stop for lunch or a stop for a personal errand on the way home), such use is not by an officer or one-percent owner of the employer, and amounts are included in employees' income to reflect the use of vehicles for commuting.

4. Sales and service. Taxpayers who spend most of a normal business day using a vehicle to make several stops in connection with the employer's business, for example, to call on customers or clients, to make deliveries, or to visit job sites, may satisfy the recordkeeping requirement in one of two ways. First, they may keep records of the personal use of a vehicle. Alternatively, if the vehicle is an automobile (or otherwise designed primarily for personal use) the taxpayer may treat 70% of the use as business use and 30% as personal use. If he vehicle is designed primarily for commercial use, the taxpayer may treat 80% of the use as business use and 20% as personal use. However, these rules are not available to taxpayers who customarily spend most of a normal business day in an office or similar setting.

COMMENTS AND THE REGULATORY PROCESS

We always invite taxpayers to provide the Service with written comments on proposed regulations. The information provided by the comment process generally enables us to improve and refine regulations before they become final. In this instance, our normal procedures of publishing proposed regulations and receiving comments prior to issuance of final regulations was not followed because of the need for immediate guidance to taxpayers. As a result, the regulations at issue are in both proposed and temporary form. We urge the public to provide us with comments by April 8, 1985. In addition, a public hearing on these regulations has been scheduled for April 16, 17, and 18.

CONCLUSION

Mr. Chairman, today I have attempted to demonstrate that the Service's initial temporary and proposed regulations requiring substantiation of a deduction or credit by "adequate contemporaneous records" were an accurate interpretation of the law and of the Congressional intent. We believe that a fair reading of the legislation history and the Joint Committee Explanation confirms our judgment.

As you debate this issue, I would hope that you keep the fundamentals of good tax administration clearly in mind. As you are aware, the income tax system in this country is based on voluntary self-assessment. We depend on taxpayers to honestly

and accurately assess their tax liabilities and, for the most part, taxpayers justify the faith that we place in them.

If we expect taxpayers to continue to warrant our faith, we must endeavor to assure them that the system works and the system is fair. If taxpayers lose their respect for the system we can expect serious consequences in the area of voluntary compliance.

The issue of personal use of business property has never been one of pure tax revenues. Instead, it is an issue that is driven by questions of fairness. the average taxpayer sees the lawyer, doctor, or accountant (and I am a member of two of those professions) drive to the Kennedy Center in a luxury automobile paid for with tax deductible dollars. To the extent that our substantiation rules permit highly visible abusive case to exist, we will see the consequences.

While I recognize the burdens associated with recordkeeping, I see no realistic alternative to the maintenance of records. Records not only enable the tax administrator to perform its function, but also assure that taxpayers will receive the full amount of tax benefits to which they are entitled.

My associates and I will be pleased to try to answer any questions you or the other Members may have.

Chairman ROSTENKOWSKI. Thank you, Mr. Commissioner.

Some people seem to believe that the level of compliance with prior law was low. Was this a problem of inadequate resources for the Internal Revenue Service or a lack of focus by the Service? Or was the problem with basic statutory provisions?

Mr. EGGER. Well, I think it is a little of all three of those, Mr. Chairman. I think in view of the effort to reduce the costs of Government, we have reduced the resources placed in the enforcement areas to a minimum, and we are auditing fewer tax returns percentagewise than we have in the past. By the same token, a part of the problem, and a very large part of the problem that we encounter in this particular instance, is the lack of any kind of records. Time after time, our examiners go out to examine the tax return and find that the taxpayer does not have anything except an estimate of some sort. And then they sit and pour over diaries and a whole lot of other things trying to arrive at a satisfactory conclusion. Whereas, if the taxpayer had records, a reasonable review of those records could ascertain that they are adequate and then they could be accepted.

Chairman ROSTENKOWSKI. You observed the reaction this morning, Mr. Commissioner. The clarion call here is to repeal even what existed prior to these regulations.

Actually, I had the worst Christmas of my life. Evidently the accountants told everybody around December 1 about the records that had to be kept. I could not go anywhere during the Christmas holidays where I was not almost physically attacked about the proposed regulations.

I am sure that the committee will review this and be sensitive about the Treasury's problems. However, I think that if a repeal bill was reported to the House floor tomorrow, it would pass overwhelmingly. And that, of course, is what your concern is.

Mr. EGGER. I think what I am saying is that repeal does not solve the problem. It may lull the public into some kind of quietude, but it is not going to solve the problem. It is still with us. We have still got the difficulty of ascertaining that a deduction is the proper deduction.

Chairman ROSTENKOWSKI. Secretary Pearlman, are there any revenue estimates with respect to the additional compliance antici-